S/2020/1332

الأمم المتحدة

مجلس الأمن

Distr.: General
29 January 2021
Arabic
Original: English

رسالة مؤرخة 17 كانون الأول/ديسمبر 2020 موجهة من الأمين العام إلى رئيس مجلس الأمن

يشرفني أن أحيل طيه تقرير لجنة التحقيق الدولية بشأن مالي، التي أنشأتها الأمانة العامة للأمم المتحدة في 19 كانون الثاني/يناير 2018 وفقا للمادة 46 من اتفاق السلام والمصالحة في مالي لعام 2015 (انظر المرفق). وكان إنشاء هذه اللجنة أيضا متسقا مع الفقرة 20 (أ) '3' من قرار مجلس الأمن 2364 (2017) وتعزيزا لها، التي قرر فيها المجلس أن تكون إحدى المهام ذات الأولوية التي تشملها ولاية بعثة الأمم المتحدة المتكاملة المتعددة الأبعاد لتحقيق الاستقرار في مالي دعمَ تنفيذ تدابير المصالحة والعدالة المنصوص عليها في الاتفاق، بما في ذلك في ما يتعلق بإنشاء لجنة تحقيق دولية وبعملياتها.

ولا يكشف التقرير هوية الشهود والضحايا والمصادر الأخرى، باستثناء بعض الضحايا الذين سبق الإبلاغ عن أسمائهم الحقيقية علناً عبر قنوات أخرى. كما أن التقرير لا يذكر تفاصيل معينة يمكن أن تحدد هوية الضحايا أو الشهود، كالمواقع المحددة لأحداث معينة أو تواريخها المحددة أو ظروفها. وهذه المعلومات متاحة في مرفقات سرية وفي قاعدة بيانات اللجنة، عند الطلب، لغرض إجراء تحقيقات أو اتخاذ إجراءات قانونية في المستقبل.

أرجو ممتنا إطلاع أعضاء مجلس الأمن على هذا التقرير.

أنطونيو **غوتيريش**

21-01244 (A)   020221   020221

الرجاء إعادة استعمال الورق

مرفق الرســـالة المؤرخة 17 كانون الأول/ديســـمبر 2020 الموجهة من الأمين العام إلى رئيس مجلس الأمن

[الأصل: بالإنكليزية والفرنسية]

NATIONS UNIES

UNITED NATIONS

Commission d'enquête internationale pour le Mali

International Commission of Inquiry for Mali

Report of the International Commission of Inquiry for Mali

(19 June 2020)

Contents

Executive summary

I. Mandate, methodology and work

1. The International Commission of Inquiry for Mali (Commission) was established on 19 January 2018 by the Secretary-General of the United Nations in accordance with article 46 of the June 2015 Agreement on Peace and Reconciliation in Mali (Peace and Reconciliation Agreement). It was mandated to investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence, committed throughout the territory of Mali between 1 January 2012 and the date of establishment of the Commission; to establish the facts and circumstances concerning the commission of such abuses and violations, including those that may constitute international crimes; to identify those allegedly responsible for such abuses and violations; and to submit to the Secretary-General a written report on its investigation and its conclusions, as well as recommendations, with a view to combating impunity in relation to the abuses and violations identified.

2. The Commission commenced its work at the end of October 2018 and conducted three working visits to Mali. On the first visit, to Bamako, the members of the Commission were able to assess the importance, hopes and expectations that the Government of Mali, the other signatories to the Peace and Reconciliation Agreement and civil society placed on their work. On the second visit, they went to the regions to present their work to local authorities and organizations, which enabled them to gain a better insight into the challenges that lay ahead. The focus of the third visit was to follow up on the work of the secretariat. On that visit, the members of the Commission, along with the Malian authorities, the signatories to the Peace and Reconciliation Agreement and relevant stakeholders, attended two one-day workshops, one on the context of the crisis in Mali, and the other on possible recommendations regarding access to justice and the fight against impunity. The Commission was not able to conduct its other scheduled working visits owing to the COVID-19 global health crisis. Although the members of the Commission were unable to meet in person in Bamako as planned in order to finalize their work, they were able to hold virtual meetings among themselves and with personnel of the secretariat based in Bamako, thus ensuring the timely completion of the investigations and drafting of the final report.

3. From the outset of its work, the Commission faced a number of security and logistical challenges that led the Secretary-General to authorize the extension of its work until 19 June 2020, instead of 19 October 2019, as initially agreed. The Commission acknowledges the administrative, logistical and security support it received from the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), which was essential for the fulfilment of its mandate. In particular, MINUSMA mobilized the necessary financial resources, including funding obtained from the Benelux countries (Belgium, Netherlands and Luxembourg) through the trust fund mechanism. The Commission also wishes to thank the Office of the United Nations High Commissioner for Human Rights and UN-Women for their support in the establishment of the Commission and the fulfilment of its mandate.

4. During the course of its mandate, the Commission worked in strict compliance with the principle of independence set out in its terms of reference. It received satisfactory cooperation from the Government of Mali and the signatories to the Peace and Reconciliation Agreement, as well as from various sections of MINUSMA (in particular the Human Rights and Protection Division and the Justice and Corrections Section), other United Nations entities and many governmental and non-governmental organizations. The Commission wishes to thank the victims and witnesses for agreeing to share their experiences with it in an environment characterized by threats and fears that were sometimes expressed.

5. In this report, the Commission presents the results of its investigations into abuses and serious violations of international human rights law and international humanitarian law and international crimes committed in the territory of Mali between 1 January 2012 and 19 January 2018. In view of the scope of the mandate and the timeline for its implementation, the Commission set investigative priorities. It decided to give priority to the most serious abuses and violations - such as violations of the right to life and physical integrity (including executions, torture and mutilation), sexual and gender-based violence and violence against children - with a particular focus on abuses and violations that may constitute international crimes. It sought, to the extent possible, to identify alleged perpetrators and chains of command relating to the incidents investigated (see confidential annex on alleged perpetrators and victims). With a view to formulating recommendations for combating impunity, it considered all the ways of addressing the impossibility, de jure or de facto, of bringing the perpetrators of abuses or violations to account – whether in criminal, civil, administrative or disciplinary proceedings.

6. The Commission, through its secretariat based in Bamako, collected many public and confidential documents and conducted field missions. The investigations covered the regions of Kidal, Timbuktu, Gao, Ménaka, Mopti and Ségou, as well as Bamako and the Koulikoro region. The Commission faced several security and logistical challenges in fulfilling its mandate, in particular difficulty in reaching witnesses, owing to the vast expanse of the territory, the hazardous nature of the roads and the extremely unstable and ever-deteriorating security conditions in the central part of Mali.

7. The investigations, which covered many serious conflict-related incidents, were representative of the different periods and areas of the conflict, and covered the main actors of the crisis. However, they reflect only part of the abuses committed between 1 January 2012 and 19 January 2018.

8. As part of its investigative strategy, the Commission carefully examined the extensive documentation available and mapped out abuses committed between January 2012 and January 2018. Using that methodology, it was able to identify priority themes and cases, which were then investigated in greater depth. Each selected incident was carefully checked to confirm or refute the information available. In conducting its investigations, the Commission relied first and foremost on evidence gathered from primary sources. It also relied on credible and reliable secondary sources to corroborate the information obtained from the primary sources and to determine the overall context of the violations, abuses and crimes.

9. The Commission used the same standard of proof as the one most often applied by international commissions of inquiry and other fact-finding missions, namely “reasonable grounds to believe”. To reach its factual conclusions, the Commission was therefore careful to gather reliable and corroborating information that would allow a reasonable and ordinarily prudent person to conclude that an incident or pattern of conduct had occurred.

10. One of the added values of the Commission’s work was the judicial follow-up with Malian courts to determine the exact status in those courts of the emblematic cases it investigated. For each of those cases, it tried to verify whether there were any investigations or legal proceedings under way and their current status. Where legal proceedings had been initiated, the Commission tried to determine how far the process had gone and what action the Malian judicial authorities had taken to identify and try the alleged perpetrators of the abuses. That work gave the Commission a better insight into the challenges facing the Malian justice system and informed its recommendations.

II. Context and causes of the 2012 crisis

11. By way of context, the Commission notes that the armed uprising that began in January

2012 in the regions in the north of Mali is part of a succession of rebellions and cyclical crises that have occurred in the country since 1960. Since gaining independence in September 1960, Mali has experienced four rebellions led mainly by the Tuaregs (1963, 1990, 2006 and 2012), three coups d'état (1968, 1991 and 2012), five peace agreements (1991, 1992, 2006, 2013 and 2015), and inter- and intra-community conflicts. The 2012 conflict was the product of a web of complex causes, although the Commission noted in particular the governance deficit in the management of the regions in the north by successive Governments and the flawed implementation of the peace agreements, resulting in increased mistrust and the radicalization of positions on both sides.

12. More specifically, the Commission considers that the absence to date of adequate work on truth and impunity for the abuses committed during previous crises was among the triggers of the 2012 crisis. Each crisis since 1960 has generated its share of abuses, the primary victims of which are the people themselves. Since independence in 1960, and even with the advent of democracy in the 1990s, Mali has done very little to address violations, abuses and crimes related to past crises, regardless of the perpetrators involved. Thus, although the interlocutors interviewed by the Commission all seemed to agree on the abuses committed against the people during the first rebellion of 1963, the Government of Mali has not paid any serious attention to the issue. For allegations of abuses committed during the Tuareg rebellion of the 1990s, the 1992 National Pact called for the establishment of an independent commission of inquiry. Instead, Mali passed a general amnesty law in March 1997 making that obsolete.

13. The failure by the Government of Mali to establish the truth and render justice for abuses committed during the previous crises, regardless of the perpetrators involved, but especially for abuses directly attributable to the Government, was a trigger of the 2012 crisis. The Commission is of the opinion that until the Malian authorities adequately address the issue of past crimes, it is difficult to envisage an end to the cycle of violence that has taken hold in the country since 1960.

14. The Commission welcomes the establishment of the Truth, Justice and Reconciliation Commission (TJRC), which represents the first attempt to seriously address the issue of past crimes. Nevertheless, even when it achieves all its objectives, the TJRC, which focuses on the plight of victims, will still not be able to satisfy the expectations for justice and the rights of victims of abuses committed during previous crises and rebellions, in particular with regard to the identification and responsibility of the perpetrators.

15. The Commission's investigations also show that ongoing impunity in Mali is one of the factors fuelling the serious inter-community violence that has been taking place in the central part of Mali since 2015 and that has deteriorated considerably since 2018. In the Commission's view, if the judicial authorities of the day had seriously and credibly addressed the then-sporadic violence between the Fulani, Dogon and Bambara communities in 2016 and 2017, they could have helped to limit the creation of and support for armed and self-defence groups among the people and put an end to the cycle of inter-community violence.

III. Results of the Commission's investigations

16. In accordance with its mandate, the Commission conducted its investigations and drafted its report within the contours of international human rights law, international humanitarian law and international criminal law.

17. In its report, the Commission presents the numerous cases which it documented, in chronological order and covering three periods: the first period began on 17 January 2012 with the outbreak of hostilities in the town of Ménaka and ended with the signing of the Ouagadougou preliminary agreement on 18 June 2013; the second period began with that agreement and ended

with the signing of the Peace and Reconciliation Agreement in Bamako in May and June 2015; while the third period covered incidents that occurred between the date of signature of the Peace and Reconciliation Agreement and 19 January 2018, the end of the Commission's temporal jurisdiction. For each of those periods, the Commission documented incidents that took place in the regions of Kidal, Timbuktu, Gao (including Ménaka), Mopti and Ségou, and in the city of Bamako and the Koulikoro region, and that were attributable to the main actors of the conflict between 2012 and 2018.

18. The Commission concludes that, since January 2012, there has been at least one non-international armed conflict across the territory of Mali involving the Malian Armed Forces and the French forces as well as extremist organized armed groups and pro-Government organized armed groups or organized armed groups with political and social demands.

19. After completing its investigations, the Commission is able to conclude that abuses and serious violations of international human rights law and international humanitarian law, some of which constitute war crimes and crimes against humanity, were committed by the main parties to the conflict that began in 2012.

Extremist armed groups

20. The Commission considers that extremist armed groups committed crimes against humanity and war crimes, including murder, maiming and other cruel treatment, rape and other forms of sexual violence, hostage-taking and attacks against personnel of humanitarian organizations and MINUSMA.

21. As soon as they took control of the towns in the north of Mali, the members of the Organization of Al-Qaida in the Islamic Maghreb (AQIM), Ansar Eddine and the Mouvement pour l'unicité et le jihad en Afrique de l'Ouest (MUJAO) set up a system of sanctions in the form of punishments, including flogging, amputation and, in the most serious cases, execution, for anyone accused of violating the rules imposed in accordance with the interpretation of Islamic law by so-called courts, which did not offer the judicial guarantees generally recognized as indispensable under international law. For example, on 29 July 2012, members of Ansar Eddine forced the population of the town of Aguelhok (Kidal region) to stone a couple to death for cohabiting and having children out of wedlock; and on 2 October 2012, a herder accused of murder and sentenced to death by the Islamic court was executed with two bullets to the chest in Timbuktu. Still in Timbuktu, on 19 June 2012, a couple accused of having a child out of wedlock was sentenced to 100 lashes by an Islamic court judge and then flogged in public; and on 16 September 2012, a man accused of theft had his right hand amputated in accordance with the decision of the Islamic court. In Gao, when the city was controlled by MUJAO, the Islamic police flogged or beat many people for reasons as diverse as not complying with the dress code, smoking cigarettes, having children out of wedlock or listening to music. The Commission also documented 10 cases where people accused of theft had their hand, foot or both limbs amputated by MUJAO in Gao and Ansongo.

22. In the context of the armed conflict, members of Ansar Eddine, AQIM and MUJAO carried out systematic or widespread rape of women and girls during the period in which they controlled the Timbuktu and Gao areas. For example, in the Timbuktu area, between 1 or 2 April 2012 and 28 January 2013, members of Ansar Eddine and AQIM committed rape, mainly gang rape. In particular, the Commission documented 17 cases of women and girls raped by members of the Islamic police or by the Timbuktu morality police using an identical method: victims were arrested under the pretext that their clothing did not adequately cover their heads or bodies, were taken to the Islamic police station, and were then raped, often repeatedly and by multiple men. The Commission also documented nine cases of rape committed in the context of "forced marriages," in which victims were forced to "marry" members of armed groups, who then raped

them repeatedly, sometimes with the participation of other men.

23. An identical phenomenon occurred in the city of Gao during the period in which it was controlled by MUJAO, from the beginning of April 2012 to the end of January 2013. The Commission documented dozens of cases of rape, including at least 11 cases in which the victims identified their attackers as members of MUJAO. As in Timbuktu, the widespread rape took place either when the victims were kidnapped by members of the Islamic police affiliated with MUJAO, or in the context of forced marriages with members of that armed group. Similarly, several cases of rape were documented during the period in which MUJAO controlled Ménaka at the end of 2012. Cases of rape were also reported in the context of the attack carried out by extremist groups in the southern part of Mali in January 2013. The Commission reiterates that the cases of rape attributed to those groups likely account for only a fraction of all cases of rape, as most victims could only give general physical descriptions of their attackers without necessarily being able to link them to a specific armed group.

24. The Commission also documented many killings of Malian military personnel hors de combat. In particular, during the final attack against the Aguelhok military camp (Kidal region) on 24 January 2012, members of Ansar Eddine and AQIM killed many Malian military personnel while they were hors de combat.

25. After the intervention of the French armed forces and the recapture of the regions in the north of Mali, the extremist armed groups, which had gone back into hiding, continued their campaign of killing, targeting in particular civilians suspected of cooperating with the foreign forces or with the Malian Armed Forces. In mid-September 2014, a man suspected by AQIM of being an informant for the Malian Armed Forces and for the French forces was beheaded, and his head was displayed in a market in Zouéra (Timbuktu region). On 19 March 2015, members of AQIM shot and killed a man accused of working for the French forces and then beheaded him in front of people at a fair in order to dissuade them from cooperating with the international forces. In the central part of Mali, since 2015, members of extremist armed groups have also killed civilians accused of not respecting their precepts, many local authorities and influential individuals considered hostile to their interests in the Mopti and Ségou regions, and influential members of the Dogon and Bambara communities, triggering an unprecedented wave of inter-community violence in central Mali.

26. In Bamako and Sévaré, extremist armed groups also carried out attacks against hotels and restaurants with the aim of terrorizing foreign nationals in Mali, including the attack against the bar-restaurant La Terrasse in Bamako on the night of 6 to 7 March 2015, which was attributed to Al Mourabitoun; the attack against the Byblos Hotel in Sévaré on 7 August 2015; the attack against the Radisson Blu Hotel in Bamako on 20 November 2015, during which 29 civilians were killed; and the attack against Le Campement Kangaba in Bamako on 18 June 2017, during which at least four civilians were killed by members of Jama'a Nusrat ul-Islam wa al-Muslimin (JNIM).

27. Between February 2012 and January 2013, MUJAO, AQIM and Ansar Eddine recruited children under the age of 15, either forcibly or in exchange for payment. Those groups kidnapped many people, attacked employees of the International Committee of the Red Cross (ICRC) and other humanitarian missions, and carried out attacks using vehicles belonging to humanitarian organizations or using United Nations emblems. They also planted large numbers of improvised explosive devices along the roads of central and northern Mali with the main goal of killing members of the Malian Armed Forces or the foreign and international forces, but also ended up killing many civilians.

28. The Commission also recorded a total of 281 attacks against MINUSMA personnel or facilities during the period covered by its mandate; most of them were attributable to extremist armed groups. Those attacks resulted in the death of 146 MINUSMA personnel and the injury of

hundreds more. Some of the attacks also resulted in the death or injury of many civilians who were not affiliated with MINUSMA but were near the sites of the attacks. At least some of the attacks, in particular those in which civilians were intentionally killed, unequivocally constitute war crimes.

Armed groups that signed the Agreement on Peace and Reconciliation in Mali

29. The Commission believes that other armed groups with social and political demands, in particular the Mouvement National de Libération de l'Azawad (MNLA), the Groupe d'autodéfense des Touaregs Imghad et leurs alliés (GATIA) and the Mouvement arabe de l'Azawad-Plateforme (MAA-Plateforme), also committed war crimes.

30. In the context of the armed conflict, MNLA killed civilians and persons hors de combat. For example, on 17 May 2014, during the attack on the region of Kidal, members of MNLA killed at least eight people and severely injured five others, although those people were not involved in the hostilities. Members of MNLA also engaged in cruel treatment of prisoners under their control. On 15 February 2013, armed men claiming to be members of MNLA arrested several dozen Arab men from Mali, Mauritania and Niger in In-Khalil, and exposed them to the sun for an entire day, blindfolded and hands tied. Between 17 and 19 May 2014, following the attack on the region of Kidal, several people captured during the attack were beaten while being held by Coordination des mouvements de l'Azawad (CMA) forces in detention facilities in the city of Kidal.

31. At the beginning of the conflict, in the cities and regions under their control, in particular Ménaka, Gao and Timbuktu, members of MNLA committed widespread rape, sometimes gang rape, and other forms of sexual violence against women and girls living in the territories under their control. The Commission documented at least 15 cases of rape and 1 case of attempted rape committed against 21 victims in Ménaka during the first five months of 2012. In Gao, many women and girls who had been raped in their homes, sometimes for days at a time, attributed those crimes to members of MNLA, distinguishing them from those of MUJAO. In 2012, in Goundam cercle (Timbuktu region), two women walking were kidnapped, tied up and raped by five armed men affiliated with MNLA.

32. In the hours and days following the capture of the major cities in the north of Mali in 2012, members of MNLA engaged in massive pillaging of all buildings in the captured cities. As soon as they arrived in Ménaka, they pillaged several schools, the local hospital and reference health centre, and many private homes. In the days following the capture of the city of Gao by MNLA and extremist armed groups, members of MNLA pillaged all the buildings in the city. For example, they pillaged several churches, the Bible Institute, warehouses operated by ICRC and the World Food Programme (WFP), the Gao regional hospital, the local health centre, private clinics, pharmacies, schools, banks, public buildings and the homes of public officials. That pillaging continued throughout much of the duration of the conflict, in the territories controlled by MNLA and each time its forces carried out an attack on a locality. For example, the day after the attack against the Arab community of In-Khalil, on 16 February 2013, members of MNLA systematically pillaged property and shops owned by members of that community, stealing vehicles, money, livestock and all the merchandise in the shops.

33. The forces of MNLA, MAA and the Haut Conseil pour l'unité de l'Azawad (HCUA) used children in the context of the armed conflict. Children were among the members of MNLA who stormed the region of Kidal on 17 May 2014, and were among the jailers affiliated with MNLA, HCUA and MAA who detained, for several days, the 34 people arrested following the attack on the region. The Mouvement arabe de l'Azawad-Coordination des mouvements de l'Azawad (MAA-CMA) continued to use children even after the signing of the Agreement on Peace and Reconciliation in Mali. On 2 June 2013, in Kidal, MNLA arrested around 100 dark-skinned men

suspected of being in the pay of the Government and expelled at least 24 of them to the city of Gao, where they arrived on 4 June after having been stripped of their money and other valuables. According to the information available to the Commission, the expulsion of those individuals was not justified either by the need to protect civilians or on the grounds of military necessity.

34. On the day after the clashes between CMA and GATIA in May 2015, individuals allegedly affiliated with GATIA arrested, tied up and killed six members of the Tuareg community of Kel-Essouk, whom they suspected of collaborating with CMA. The next day, all the families in the Kel-Essouk community (about 230 people) had to leave the village. In addition, in June 2016, the WFP food humanitarian assistance warehouse located in downtown Kidal was pillaged by persons affiliated with GATIA.

35. During an attack carried out in November 2014, men allegedly affiliated with MAA-Plateforme pillaged and burned the properties of the Arab community of Oulade Ganam (village of Zarho). Four men were arrested and detained for almost four months in a cell run by MAA-Plateforme, after which they were hospitalized. The attack on the village of Zarho forced some 200 Arab families from the Oulade Ganam community to relocate in order to escape the violence.

Malian defence and security forces

36. The Commission has reasonable grounds to believe that the Malian defence and security forces committed war crimes, including violence to the life and person of civilians and persons hors de combat suspected of being affiliated or cooperating with extremist armed groups.

37. The Commission documented many killings and other offences against life committed by the Malian defence and security forces, in particular the Malian Armed Forces, against civilians or persons hors de combat, in the context of the armed conflict. Initially, as armed groups took control of the north, the perpetrators of those killings targeted in particular members of the Tuareg and Arab communities affiliated with the armed groups. For example, on the night of 8 to 9 September 2012, 16 Mauritanian and Malian preachers, most of whom were Arab, were killed by members of the Malian Armed Forces from the Diabali military camp (Ségou region), who suspected them of being affiliated with extremist armed groups. The perpetrators of those killings also targeted some Tuareg military personnel. For instance, three Tuareg gendarmes were arrested and killed by the Malian Armed Forces in Sévaré on 2 April 2012.

38. The recapture of the regions in the north of Mali by the Malian Armed Forces, beginning in January 2013, was also marked by many killings of Tuaregs, Arabs and Fulani whom the Malian Armed Forces suspected of being affiliated with armed groups. During the recapture of Konna on 11 January 2013, at least 15 Tuaregs, Arabs and Fulani suspected of collaborating with extremist armed groups were killed by members of the Malian Armed Forces based in Sévaré (Mopti region). On 18 January 2013, two men from the same Tuareg family, who were suspected by their neighbours of collaborating with armed groups, were killed in Siribala (Ségou region) by members of the Malian Armed Forces from the Diabali camp. During the recapture of the city of Timbuktu by the Malian Armed Forces and the French armed forces at the end of January 2013, members of the Malian Armed Forces arrested and killed 10 Arab men and 1 Songhai man who had remained in the city after the extremist armed groups had fled. On 23 March 2013, at least four civilians were killed by the Malian Armed Forces during sweep and securement operations in the city of Gao.

39. After 2015, as the armed conflict moved towards the central part of the country and extremist armed groups began increasingly recruiting members of the Fulani community, the Malian Armed Forces carried out targeted killings of members of the Fulani community in particular. For example, on 7 April 2016, seven Fulani men suspected of collaborating with extremist armed groups were arrested and tortured by members of the Malian Armed Forces from

the Diabali military camp. Two of the detainees died as a result of their injuries. On 19 December 2016, four Fulani men and two boys 15 and 16 years of age, one Fulani and the other of unidentified origin, were killed near the village of Isèy (Mopti region) by members of the Malian Armed Forces from Mondoro, who were conducting a "counter-terrorism" operation in the village. Between 2 and 21 May 2017, many Fulani men from Mondoro (Mopti region) were arrested and tortured by members of the Malian Armed Forces owing to their suspected association with extremist armed groups. At least five of the men died as a result of those abuses.

40. The Commission also documented a number of cases in which persons arrested, detained or kidnapped by members of the Malian Armed Forces were never seen alive again, giving it reasonable grounds to believe that they had been killed.

41. The Commission documented many other cases of torture, mutilation and cruel treatment perpetrated by the Malian defence and security forces, especially the Malian Armed Forces, against civilians and persons hors de combat, in particular during the recapture of the cities in the north of Mali in 2013 and 2014, and during "counter-terrorism" operations carried out between 2015 and 2017. In particular, the recapture of the Timbuktu region by the Malian Armed Forces was accompanied by violence. For example, six Tuareg men, including one Bella, who were suspected of "terrorism" after having been arrested in Léré (Timbuktu region), were violently beaten. Two of the detainees were allegedly injected with an unknown substance in their arms, which caused serious injuries and burns. In addition, several months after the Malian Armed Forces recaptured the city of Gao from MUJAO, members of the Malian Armed Forces mistreated 13 detainees by beating them with rifle butts and truncheons, kicking them, subjecting one of them to electric shocks and cutting off the ear of another.

42. Those abuses continued after the signing of the Agreement on Peace and Reconciliation in Mali, in response to attacks by extremist armed groups against the Malian Armed Forces. For example, in the first half of 2015, members of the Malian Armed Forces from the Nampala military camp committed many acts of torture and cruel treatment against men mainly from the Fulani community whom they suspected of participating in attacks against military personnel in the region. In April 2016, seven men from the Fulani communities of Sokolo and Dogofri, who were suspected of collaborating with extremist armed groups, were detained at the Diabali military camp, where they were undressed, tied up, threatened with death, brutally beaten and burned before being returned to their cells. Two of the men died as a result of their injuries. In May 2017, many men, mostly Fulani, from the commune of Mondoro (Mopti region) were violently beaten by members of the Malian Armed Forces after their arrest, including with rifle butts and iron bars, because of their suspected association with extremist armed groups. In some cases, military personnel even performed mock executions. Some of the detained men died as a result of those abuses.

43. The Commission also documented cases of rape committed by members of the Malian Armed Forces. For example, in March 2013, following the arrest of several men from the village of Kadji who were suspected of collaborating with MUJAO, a member of the national guard entered a house, under the pretext of conducting a search, and raped a woman. In May 2014, a 14-year-old girl was raped by a member of the Malian Armed Forces in Gao and, in July 2014, a 16-year-old girl was raped by a member of the Malian Armed Forces in the city of Timbuktu.

44. The Commission documented a number of instances in which members of the Malian Armed Forces appropriated property for their own personal use without the consent of the owner during military operations.

45. During demonstrations that took place on 28 November 2013 in Kidal, on 12 July 2016 in Gao and on 17 August 2016 in Bamako, members of the Malian defence and security forces, including the national police, committed violations of the right to life and physical integrity by

using potentially lethal force without justification.

46. The Commission has reasonable grounds to believe that, while the Comité national pour le redressement de la démocratie et la restauration de l'État (CNRDRE) was in power, soldiers under the command of Captain Sanogo perpetrated violence to life and person (including cruel treatment and torture), outrages upon personal dignity (including humiliating and degrading treatment) and rape, which constitute serious human rights violations, as part of the counter-coup of 30 April 2012 and the mutiny at the Kati military camp of 30 September 2013.

Self-defence groups in the central part of Mali

47. On 17 June 2017, members of the Dan Na Ambassagou group, in retaliation for the murder of one of their members, organized a series of attacks against several Fulani hamlets in Koro cercle (Mopti region) suspected of colluding with extremist armed groups, and killed at least 39 civilians, including children. The Commission notes that that incident marked the beginning of a systematic or widespread attack by that group against the Fulani in Koro cercle and other cercles in the Mopti region. Members of Dan Na Ambassagou therefore committed murders that amount to crimes against humanity and war crimes. On 12 February 2017, an organized group of Bambara hunters from Macina cercle (Ségou region) attacked several Fulani hamlets in Macina cercle, killing 18 Fulani men, one girl and one boy. The Commission considers that those killings can be classified as war crimes.

Foreign and international forces

48. The Commission also documented two serious human rights violations committed by MINUSMA forces and one violation of international humanitarian law committed by the forces of Operation Barkhane.

49. While in almost all cases MINUSMA contingents act in accordance with humanitarian law and in a manner respectful of human rights, the Commission documented two cases of violence involving MINUSMA forces. On 18 May 2016, after six of their soldiers died when their convoy hit two mines, Chadian MINUSMA soldiers arrested two Tuareg men and one boy in the Kidal region who were in the vicinity of the explosion site and, under the supervision of their commander, beat them violently on the head with their rifle butts. One of the men died as a result.

50. On 18 April 2016, when a demonstration at Kidal airfield turned violent, Guinean peacekeepers used their firearms, killing two demonstrators, including one 17-year-old, and injuring nine others, who sustained gunshot wounds to their lower limbs. Those events led to an internal investigation, on the basis of which a report was submitted to the Special Representative of the Secretary-General in May 2016. The Commission notes that the MINUSMA soldiers fired at the ground to defend themselves and to retreat. However, on the basis of the information at its disposal, the Commission considers that some of those shots fired as part of a retreat constituted potentially lethal and unjustified use of force, in violation of the right to life and physical integrity.

51. The Commission documented a case in which an eight-year-old child was killed by a helicopter of the French armed forces of Operation Barkhane during an operation in Aguelhok (Kidal region) in 2016. In light of the information at its disposal and in the absence of any evidence that the child was participating in the hostilities, the Commission considers that there are reasonable grounds to believe that the French armed forces failed, at the very least, to discharge their obligation to do everything feasible to verify that the objective attacked was participating directly in the conflict.

52. On the basis of all the facts established in this report and the crimes described above, it

can be concluded that the following human rights were violated or denied: the right to life, the right to physical and mental integrity, the right to liberty and security, freedom of thought, religion, opinion and expression, and the prohibition on the recruitment and use of child soldiers. Those violations and abuses had a direct impact on the enjoyment by the Malian population of their economic, social and cultural rights, in particular the right to education.

IV. General conclusions from the Commission's inquiry

53. While almost all parties to the conflict committed abuses, the Commission notes that a very high number of documented human rights violations and war crimes were attributable to the defence and security forces. In particular, they were responsible for ill-treatment, torture, enforced disappearances and summary executions directed at the Tuareg, Arab and Fulani peoples when the regions in the north of Mali were recaptured in 2013, and perpetrated during "counter-terrorism" operations conducted in the central part of the country since 2015. In addition, military police officers accompanying soldiers of the Malian Armed Forces in operations were rarely in a position to intervene or carry out their military police duties unhindered and were sometimes threatened by the soldiers when trying to perform their functions.

54. The Commission stresses that countering "terrorism" cannot be a reason or justification for the commission of serious human rights violations and war crimes. While the Commission considered that those acts might constitute crimes against humanity in view of their scale and their repetitive and similar nature, it was unable to establish, according to its standard of proof, that all the elements of crimes against humanity were present.

55. The Commission confirms that women and girls had been the victims of sexual violence since 2012, most of which had been directly conflict-related. The violence was largely attributable to armed groups, in particular MNLA and extremist armed groups active in 2012 (AQIM, MUJAO and Ansar Eddine). The majority of conflict-related sexual violence was perpetrated in 2012 and early 2013 in the regions of Timbuktu and Gao (including Ménaka) and in the northern parts of the Mopti and Ségou regions. Although it was not possible to provide exact numbers because stigmatization and fear of reprisals had led to underreporting, sexual violence committed in that context was widespread. While sexual violence has received considerable attention from civil society, the complaints lodged by the victims have still not been adequately addressed by the Malian judicial authorities.

56. Through its investigations, the Commission was able to confirm that violations, abuses and crimes were committed against girls and boys by the defence and security forces and by all armed groups. The matters that the Commission finds most worrying include the recruitment and use of children by armed groups, based primarily on community and economic considerations, the number of children killed and maimed since 2012 by improvised explosive devices and explosive remnants of war, and the multiple attacks on humanitarian organizations and their personnel. The Commission is also particularly concerned about the impact of the conflict on children's right to education. Since 2012, owing to the security situation and an inadequate State presence, school closures in the regions in the north and then in the central part of the country have become the rule rather than the exception.

57. In the course of its investigations, the Commission documented a total of 281 attacks against MINUSMA property and personnel that occurred between 1 July 2013, date of the establishment of the Mission, and 19 January 2018. The Commission notes the considerable complexity of the status of MINUSMA under international humanitarian law, which makes it difficult to determine the Mission's exact status in the Malian armed conflict and to classify the attacks carried out against it in legal terms. The Commission considers this to be a matter of great legal and strategic importance that could be taken up by the Secretary-General. The

Commission notes that, far from being limited to MINUSMA, this complexity affects the mandate and activities of United Nations peacekeeping missions in modern times and makes it increasingly difficult to distinguish between peacekeeping missions and peace-enforcement missions.

V. Combating impunity for conflict-related violations, abuses and crimes

58. The Commission notes with regret that, eight years after the crisis began and five years after the signing of the Peace and Reconciliation Agreement, impunity for conflict-related violations, abuses and crimes continues to be one of the main challenges to peace and reconciliation in Mali. The handling of conflict-related court cases by the Malian authorities remains very limited and largely inadequate. The vast majority of the alleged perpetrators of the abuses committed in Mali since the beginning of the conflict remain unpunished and continue to enjoy total impunity. The situation is even more grievous in the case of the conflict-related abuses committed by the defence and security forces, none of which have led to a criminal trial.

59. In view of the Malian judicial authorities' record in handling conflict-related violations, abuses and crimes, the Commission sought to examine and highlight the difficulties encountered by the Malian justice system. It first identified obstacles related to the crisis, such as a lack of security for law officers and judicial personnel, risks for victims and witnesses, and the disorganization within the criminal courts since 2012 as a result of the crisis. The Commission also identified deeper structural problems, including endemic corruption in the judicial system, underfunding of the justice system, inadequate training of judicial personnel, especially in the handling of international crimes, a lack of concrete measures to protect victims and witnesses, difficulties of access to justice for victims and witnesses, the judiciary's difficulties in maintaining its independence from political power, and a lack of trust in the national justice system among Malians, who prefer customary justice mechanisms that are unsuited to dealing with serious crimes.

60. The Commission found that, besides the obstacles and challenges within the Malian justice system, impunity in Mali for conflict-related violations, abuses and crimes is above all due to a lack of political will to make combating impunity for conflict-related abuses a priority. The Commission noted sporadic and disorganized efforts by the Government of Mali in that regard, but considers that they reflect a need to demonstrate that certain provisions of the Peace and Reconciliation Agreement are being implemented, rather than a truly strong and proactive strategy for delivering justice to the victims of conflict-related violations, abuses and crimes.

61. The Commission is of the view that the solution to the crisis in Mali requires a comprehensive, sincere and coordinated approach to combating impunity that will establish the criminal responsibility of the main perpetrators of serious crimes and promote peace, truth, reconciliation and the rights of all victims. The Commission considers that combating impunity for the most serious violations, abuses and crimes is both an obligation for Mali and a prerequisite for lasting peace and for addressing the root causes of the Malian conflict. The Commission urges the Government of Mali, with the support of the international community, to ensure that it does not foster a peace process in which combating impunity is overshadowed by other considerations.

VI. Recommendations

62. On that basis, and in addition to endorsing a number of existing recommendations falling within the scope of its mandate that it considered, the Commission principally recommends that the Government of Mali, with the support of its partners:

1. **Bring to justice, without delay, the perpetrators of serious violations and international crimes on the basis of the cases documented by the Commission** by setting up

within the Malian courts a special court to judge international crimes. It would be advisable to include international experts in that special court. The court's work should be based on a clear and understandable criminal policy that will guide prosecutors and in the context of which priorities are established in a transparent manner and on the basis of objective criteria. The criminal policy should include sexual and gender-based violence and violence against children. The abuses committed by the defence and security forces must be an integral part of the criminal policy and the resulting prosecution strategy.

2. **Adopt measures that reflect a strong and proactive strategy to combat impunity, including by ensuring that no statute of limitations or amnesty will apply to the most serious crimes and violations**. To be fully engaged in combating impunity, the Malian Government must repeal laws that allow the perpetrators of international crimes and other serious human rights violations to be granted amnesties that cannot be granted under international law, or laws that prevent the effective combating of impunity**.** This also means removing obstacles and bringing to justice as soon as possible all perpetrators of serious human rights violations, including members of the defence and security forces.

3. **Uphold women's and children's rights in Mali.** In order for the judicial system to inspire greater trust, particularly among victims of sexual violence, efforts should first be made to reform the defence and police sector in line with the United Nations women, peace and security approach. Based on the existing body of laws, it will be necessary to pass a law on the prevention, punishment and handling of gender-based violence. Mali should also revise its national laws and, in particular, its Family Code, to bring them into line with the international conventions it has ratified, and prohibit and punish traditional practices harmful to the rights of the child, including genital mutilation, child exploitation and child marriage. At the judicial level, this will also mean appointing specialized prosecutors and creating specialized police and gendarmerie units and/or police or gendarmerie focal points specialized in sexual and gender-based violence and children (as victims and as suspects).

4. **Develop an operational and institutional normative framework for the protection of victims and witnesses and ensure appropriate national implementation of the Rome Statute of the International Criminal Court**. Mali does not have a coherent normative, operational and institutional framework for the protection of victims and witnesses, especially in the context of the crisis. It seems important that a specific law be adopted and that appropriate institutions be set up for this purpose. The Commission also recommends taking advantage of the ongoing revision of the Code of Criminal Procedure to fully and clearly incorporate into it the provisions of the Rome Statute, in particular those concerning the definition of war crimes and crimes against humanity.

5. **Set up a mechanism to monitor the implementation of the Commission's recommendations.** In order to give coherence to the fight against impunity in Mali and ensure that its recommendations do not remain unimplemented, the Commission recommends setting up a mechanism to monitor the implementation of its recommendations. The objective and mandate of such a mechanism would be, beyond implementing the Commission's recommendations, to coordinate and streamline all existing efforts to achieve true justice in Mali in relation to conflict-related violations, abuses and crimes.

I. Introduction

1. The International Commission of Inquiry for Mali (the Commission) emanated from the peace process and in particular from article 46 of the Agreement on Peace and Reconciliation in Mali, which was negotiated in Algiers and signed by the Government of Mali and the armed groups of the Coordination des Mouvements de l'Azawad (CMA) and the Plateforme des mouvements du 14 juin 2014 d'Alger (the Plateforme) in Bamako on 15 May and 20 June 2015 (Peace and Reconciliation Agreement).[1]

2. The Government of Mali requested the establishment of an international commission of inquiry in a letter dated 1 July 2014 addressed to the Secretary-General, and reiterated that request in a letter dated 5 April 2016 addressed to the United Nations Security Council (Security Council).[2] In its resolution 2364 (2017) of 29 June 2017, the Security Council decided that one of the priority tasks of the United Nations Integrated Multidimensional Stabilization Mission in Mali (MINUSMA), under its mandate, was to support the establishment and operations of an international commission of inquiry.[3] The Commission was established officially by the Secretary-General on 19 January 2018 with the appointment of three members: Lena Sundh (Sweden), Chair; Simon Munzu (Cameroon); and Vinod Boolell (Mauritius).[4]

3. The members of the Commission were assisted in their work by a secretariat based in Bamako and composed of 14 international United Nations experts. The secretariat also comprised local support staff, including language assistants and drivers.

4. Although the Commission emanated from the peace process, under its terms of reference, it was guaranteed total independence from any State, any party involved in or associated with the crisis, MINUSMA or any other organ of the United Nations.[5] The Commission worked in strict compliance with that principle of independence throughout its mandate. It received satisfactory cooperation from the signatories to the Peace and Reconciliation Agreement and MINUSMA.

5. The present report is submitted pursuant to paragraph 1(c) of the Commission's mandate, which provides that the Commission shall submit a written report on its investigations and its conclusions to the Secretary-General within a year from the date of the effective commencement of its work. The Commission effectively commenced its work on 22 October 2018 but, owing to various challenges, was granted an extension by the Secretary-General, who authorized it to

[1] Article 46 of the Peace and Reconciliation Agreement. The establishment of an international commission of inquiry was already envisaged in article 18 of the preliminary agreement for the presidential election and the inclusive peace talks in Mali, signed in Ouagadougou on 18 June 2013 between the Transitional Government of National Unity of the Republic of Mali and the Coordination du mouvement national de l'Azawad and the Haut conseil pour l'unité de l'Azawad (Ouagadougou preliminary agreement).

[2] Letter dated 19 January 2018 from the Secretary-General addressed to the President of the Security Council (S/2018/57), published on 23 January 2018.

[3] Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)), para. 20 (a) (iii). See also Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018), para. 15. The Security Council had previously requested MINUSMA to support the establishment of an international commission of inquiry in 2015 and 2016. See Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)), para. 14 (b) (iii); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)), para. 19 (a) (iii).

[4] Letter dated 19 January 2018 from the Secretary-General addressed to the President of the Security Council (S/2018/57), published on 23 January 2018. The annex to that letter contains the terms of reference of the Commission (terms of reference). Paragraph 16 of the terms of reference provides that the Commission shall be deemed to have been established on the day that its three independent expert members are designated. As the members of the Commission were appointed on 19 January 2018, the Commission chose that date as the date of its establishment, and not 23 January 2018, the date of publication of the letter.

[5] Terms of reference, paras. 2, 7 (f), 9 and 13 (b).

complete its work on 19 June 2020. The final report, which sets out the investigations conducted by the Commission and the final conclusions reached, was submitted on 26 June 2020.

II. Terms of reference

6. Under article 1 of its terms of reference, the Commission was mandated to:

Investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence, committed throughout the territory of Mali between 1 January 2012 and the date of establishment of the Commission;

To establish the facts and circumstances of the commission of such abuses and violations, including those that may constitute international crimes, and identify those allegedly responsible for such abuses and violations;

Submit a written report on its investigations and its conclusions to the Secretary-General within a year from the date of the effective commencement of its work. In the report, the Commission was also to present recommendations to the Secretary-General and all competent authorities with a view to combating impunity in relation to the abuses and violations identified.

7. The Commission's temporal jurisdiction therefore ran from 1 January 2012 to 19 January 2018, the date of establishment of the Commission. Consequently, the Commission did not investigate allegations of violations, abuses and crimes committed before 1 January 2012 and after 19 January 2018.[6] The Commission's territorial jurisdiction covered the entire territory of Mali.

8. With regard to its subject matter jurisdiction, the Commission was mandated to investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence. In view of the scope of that mandate and the timeline for its implementation, the Commission set investigative priorities, deciding to the give priority to the most serious abuses and violations - such as violations of the right to life and physical integrity (including executions, torture and mutilation), sexual and gender-based violence and violence against children - with a particular focus on abuses and violations that may constitute international crimes.

9. With regard to personal jurisdiction, the Commission was mandated to identify alleged perpetrators. Having been mandated to determine whether any of the documented human rights abuses and violations may constitute international crimes for which individual criminal responsibility could be established, the Commission sought, to the extent possible, to identify the alleged perpetrators and chains of command in relation to the incidents investigated. It considered that its mission was to examine the role of all the actors involved in the crisis that has taken hold in Mali since 2012, whether or not they were signatories to the Peace and Reconciliation Agreement. Out of respect for the right of presumption of innocence, and save in exceptional cases, the Commission did not deem it appropriate to make public the list of alleged perpetrators it established in the course of its investigations; it submitted the list for all practical purposes to the Secretary-General on a confidential basis.

10. Results: Under paragraph 1 (c) of its terms of reference, the Commission was mandated to present recommendations to the Secretary-General and all competent authorities with a view to combating impunity in relation to the violations and crimes identified. The Commission therefore focused its recommendations on the set of means to address the impossibility, de jure or de

[6] Nonetheless, in its assessment of the context, in its analysis of the fight against impunity and in the reasoning behind its recommendations, the Commission took into consideration any information it received concerning events outside its temporal jurisdiction.

facto, of bringing the perpetrators of abuses or violations to account – whether in criminal, civil, administrative or disciplinary proceedings.[7]

III. Work of the Commission and operational context

11. In addition to visiting with the Secretary-General at United Nations Headquarters in New York for the launch of their work,[8] the members of the Commission made three visits to Mali. During the first two visits, which took place in October 2018 and February-March 2019, they officially launched the Commission's work, met with all stakeholders in Bamako, Kidal, Gao, Timbuktu and Mopti, and explained the Commission's mandate.[9] During the third visit, which took place in October 2019, their focus was to follow up on the work of the secretariat. Owing to the COVID-19 pandemic, the Commission ended up finalizing its report online.

12. Through its secretariat based in Bamako, the Commission carried out field investigations, during which it conducted more than 500 individual, and in some cases group, interviews with victims, witnesses, alleged perpetrators and other sources. In addition to Bamako, the Commission visited Konna, Ansongo, Kati, Ségou, Sévaré, Mopti, Ménaka, Gao, Timbuktu and Kidal. It had planned to visit refugee camps in the neighbouring countries of Mali, notably Mauritania, Niger and Burkina Faso, in March and April 2020, but owing to the COVID-19 pandemic, that was not feasible. Even though those visits might have added value to its work, the Commission considers that the failure to visit the refugee camps did not have a substantive effect on the result of its investigations, given the amount of information already collected on the emblematic cases chosen.

13. The Commission also collected important and useful documents from the Malian authorities, the armed groups that signed the Peace and Reconciliation Agreement, MINUSMA and other entities of the United Nations, States, civil society organizations and other entities or individuals which the Commission found credible and reliable.

14. The fulfilment of the Commission's mandate was not without obstacles. In the course of the field investigations, the Commission encountered difficulties which at times limited its ability to carry out its work effectively. In particular, it had difficulty reaching witnesses, due to the vast expanse of the territory, the limited number and dangerous nature of the roads and, in general, the still-extremely-unstable security situation in the central and northern regions of the country.

15. The Commission had to conduct its investigations in a security environment that deteriorated steadily from the moment it commenced its work, especially in the central part of Mali.[10] Indeed, extremist armed groups, present in the area since 2015, continued to intensify their attacks against the Malian defence and security forces and MINUSMA, as well as the targeted killing of influential local people and State officials and the planting of improvised explosive devices on roads. Their presence and activities within communities (imposition of religious practices and recruitment of combatants) exacerbated pre-existing tensions between communities and contributed to the development of opportunistic crime. A cycle of violence between communities

[7] See the definition of impunity in the report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1), 8 February 2005, p. 6.

[8] During their visit, the members of the Commission also contacted departments within the Secretariat in New York working on Mali to draw on their expertise.

[9] Press release 001/2018, The International Commission of Inquiry for Mali launches its activities and concludes its first visit to the country, 3 November 2018; MINUSMA, press release of 10 March 2019, The International Commission of Inquiry for Mali concludes its second visit to the country.

[10] In the entire Mopti region, the north of the Ségou region and the north of the Sikasso region.

linked to the development of community-based self-defence groups (Fulani, Bambara and Dogon) began as early as 2016, as the Commission's investigations showed.[11] Insecurity and violence against civilians continued to rise in the central part of Mali as the Commission went about fulfilling its mandate. As a result of that growing insecurity, the Commission was unable to reach certain areas in which it had planned to conduct investigations. It was also clear that while serious abuses continued to occur, the Commission's sources and contacts did not focus their attention on the older abuses that were of primary concern to the Commission. The phenomenon of internally displaced persons also resumed in 2019, on a scale not seen since 2012-2013,[12] making the work of locating potential victims and witnesses more complex.

16. The Commission notes that the global COVID-19 pandemic had a marginal impact on the finalization of its investigations, limiting in some cases its ability to confront groups or individuals accused of violations, abuses or crimes. The Commission adapted by seeking and obtaining such information in written form.

IV. Methodology

(A) Documentation methodology

17. The Commission first collected the extensive documentation available concerning allegations of violations, abuses and crimes committed in Mali since 2012. It then reviewed that information thoroughly in order to map out allegations of abuses committed between January 2012 and January 2018. Using that methodology, it was able to identify priority themes and emblematic cases that would be investigated in more detail, the objective being to document, as a matter of priority, serious incidents representative of the different temporal phases and geographic areas of the crisis, covering all the most important actors. Priority cases were also determined on the basis of other criteria, in particular the scale, nature, modus operandi and impact of the abuses, violations and crimes and the interest they represented in terms of judicial response.[13] The list of selected cases was regularly reassessed in order to adapt to the information and testimonies obtained during the investigations. The investigations were therefore not exhaustive; they covered only some of the abuses committed between 1 January 2012 and 19 January 2018.

18. In conducting its investigations, the Commission relied primarily on evidence gathered from primary sources.[14] It also relied on credible and reliable secondary sources to corroborate the information from the primary sources and to determine the overall context of the abuses, violations and crimes.[15] Each incident included in the report was verified to confirm or refute the

[11] See cases CEI90, CEI91 and CEI95.

[12] See for example testimony No. 315; interview with the regional department of social development of Sévaré, 10 May 2019; meeting with source No. 89; HRW report: "We used to be brothers", self-defence group abuses in Central Mali, 7 December 2018, pp. 80-81.

[13] For an analysis of the criteria, see for example International Criminal Court, Office of the Prosecutor, Policy paper on case selection and prioritization, 15 September 2016, paras. 38-41.

[14] The primary sources included: (1) testimony from victims of acts of violence, eyewitnesses, family members or close acquaintances of victims who had direct information about the incidents in question; (2) testimony from others who had direct and reliable information about the acts of violence, or the circumstances in which they were committed or commissioned; (3) photographs, videos and audio documents from reliable sources that the Commission was able to authenticate; (4) documents supporting direct testimony, such as medical documents attesting to injuries to victims, correspondence, copies of judgments or other documents arising from legal proceedings; (5) statements by alleged perpetrators of acts of violence; (6) public and official information, such as laws, regulations, directives, statements, and any relevant official documents of the Government of Mali.

[15] The secondary sources included: (1) confidential interviews with witnesses who received information directly from a person known to them and for whom the Commission found the source to be credible and reliable and the information to be valid; (2) testimony obtained from or contained in publications or presentations of the United Nations and human rights research institutes and organizations, where the

available information. The Commission sought to provide the most accurate picture of the violence and, where possible, quantified or gave an approximate scale of the number of victims, taking care to disaggregate the data by gender.

19. The Commission had a forensic doctor in its secretariat, which allowed it to forensically validate the physical integrity of the violations it documented, basing its analyses on existing international standards.[16] When victims had undergone an initial medical examination or had been hospitalized, the forensic doctor was able, in some cases, to consult medical records and/or collaborate with the staff of health facilities to confirm the initial trauma assessment and establish attributability between the allegations and the sequelae. In the case of extrajudicial executions, and because of the time that had elapsed, the forensic doctor analysed the documents collected during the investigation in order to form an opinion as to the diagnosis and the forensic form of death, among other things.

20. The Commission mainstreamed gender in its work to ensure that all violations and crimes committed against women and men of all ages and from all walks of life were recognized and examined from a gender perspective. To that end, UN-Women made available an expert on sexual and gender-based violence, who provided advice, training and guidance to the Commission.

21. In order to identify and contact victims and witnesses of conflict-related sexual and gender-based violence, the Commission contacted specialized intermediaries such as victims' associations, human rights organizations, women's associations and providers of services for victims of sexual violence. The Commission's investigators informed the men representing certain groups, such as internally displaced persons, armed groups and ethnic minorities, about the need to talk to women and girls separately in order to better address their concerns. The Commission paid particular attention to the "do no harm principle", taking steps to avoid re-interviewing survivors who had already given testimony to other organizations that applied a methodology which, upon careful review, was considered equivalent to that of the Commission. Victims were also informed at the beginning of the interviews about the organizations available for medical, psycho-social and legal care. Before and during the interviews, the investigators duly considered cultural and gender perspectives in order to be able, if necessary, to take confidentiality measures specific to survivors of sexual or gender-based violence.[17]

22. The Commission also paid particular attention to violations, abuses and crimes committed against children, using a documentation methodology adapted to their needs and drawing on information provided by human rights actors, child protection organizations and, in particular, the United Nations country team in Mali responsible for monitoring cases of grave violations against children, co-led by UNICEF and MINUSMA. The child protection specialist in the

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Commission, after investigation and analysis, found the source to be credible and reliable and the information to be valid; and (3) public reports, submissions, books, documentaries and similar materials, where the Commission found the source to be credible and reliable and the information to be valid.

[16] The medical assessments were carried out in accordance with up-to-date international standards and with the help of intelligible interview sheets and medical examinations of the presumed victims, supplemented by psychological tests to evaluate post-traumatic stress sequelae. See Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted to the United Nations High Commissioner for Human Rights, 9 August 1999, and the Harvard Trauma Questionnaire.

[17] In accordance with standard procedures for witness protection and the identification of interview locations, a secure environment was selected to ensure the safety and confidentiality of victims and witnesses. During interviews with victims, efforts were made to identify experienced male and female interpreters when victims of sexual and gender-based violence and/or trauma were involved. The Commission's forensic doctor conducted psychological assessments and counselled survivors and witnesses after the interviews. A glossary of sexual violence terms in Arabic, Fulfulde and Bambara was made available to the interpreters.

Commission’s secretariat also provided it with expertise. While taking care to protect the best interests of the child, the Commission opted to build on the existing work of actors specializing in the monitoring of serious violations against children in Mali, thus keeping its direct contact with children to the strict minimum. The aim was to avoid the phenomenon of endless testimonies which could traumatize children over and over, and to protect them from possible reprisals and stigmatization in a context where possible perpetrators were still active.

23. Once the violations, abuses and crimes were established, the Commission did its utmost to identify the alleged perpetrator or perpetrators of the selected cases and, where appropriate, the obstacles and impediments to judicial repression for the abuses. Wherever possible, the Commission confronted the group or individual accused of violations or crimes in order to obtain additional information and their statement of the facts. That approach reflected not only the Commission’s effort to implement the methodology, but also its desire to reconcile the fight against impunity, which was its core mandate, with the yearning for national reconciliation expressed in the Agreement on Peace and Reconciliation in Mali.

(B) Standard of proof

24. The Commission used the same standard of proof as that applied by most international commissions of inquiry and other fact-finding missions, namely that of “reasonable grounds to believe”.[18] To reach its factual conclusions, the Commission made sure to gather reliable and corroborating information that would allow a reasonable and ordinarily prudent person to conclude that an incident or pattern of conduct had occurred.

25. The Commission carefully analysed the information collected and individually assessed the credibility of the testimony and the reliability of the evidence gathered. With regard to the reliability of sources that provided information, the Commission took into consideration the nature of the sources, their independence and their methodology. It assessed the credibility of witnesses in the light of their personal and political interests, their position in relation to the events and their motivation for testifying. The Commission also assessed the internal consistency of the account and the ability of witnesses to recall the events, taking into consideration the age and health status of the victims and the trauma suffered.

26. The Commission sought corroborating information from at least two independent and reliable sources. Any information provided by a reliable primary source could be corroborated by the investigators’ own findings, which might then constitute another independent and reliable source. The Commission did not always need to further investigate any information obtained from an investigation report of a secondary source which applied a methodology that already required corroboration of the information obtained, since it was itself able to verify and validate the conclusions and methodology of that source. In cases of sexual violence, because of the difficulty in obtaining another independent source, particularly when the victim did not receive medical assistance, the Commission tried to analyse the information by assessing the details of the victim's account and its consistency with publicly available information, seeking to establish whether the acts committed revealed patterns of conduct, or comparing the victim's account with the findings of the Commission’s forensic doctor.[19]

(C) Cooperation with the Commission

[18] Detailed report of the team of international experts on the situation in Kasai (A/HRC/38/CRP.1), 29 June 2018, para. 32; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/39/65), 9 August 2018, para. 3; Report of the independent international fact-finding mission on Myanmar (A/HRC/39/64), 12 September 2018, para. 6.

[19] OHCHR, Integrating a gender perspective into human rights investigations, Guidance and practice, 2019, p. 21; Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, A/HRC/42/CRP.4, 22 August 2019, para. 20.

27. According to its terms of reference, the Commission was expected to receive the full co-operation of the Government of Mali and all the signatories to the Peace and Reconciliation Agreement. It was thus able to consult all the persons and authorities it wanted to consult, and to submit requests for cooperation to third States and intergovernmental and non-governmental organizations.[20]

28. The Commission considers that, overall, it received satisfactory cooperation from the signatories to the Peace and Reconciliation Agreement. The Government of Mali designated ambassador and former minister Boubacar Gaoussou Diarra, a member of the Prime Minister's Office, as the focal point for the Commission, in order to coordinate the efforts of the public authorities to assist and collaborate with the Commission.[21] Although not all its requests could be satisfied, the Commission was able to observe that efforts were made to share documents and contacts and to facilitate meetings with political, medical, judicial and military authorities in Bamako and during field missions.[22] The same assessment could be made of CMA and the Plateforme, which designated people within their respective organizations to facilitate interaction and cooperation with the Commission. There too, the Commission noted a willingness to cooperate, as reflected in the fact that they were readily available to participate in working sessions with the secretariat, facilitate interviews and share contacts and documents with the Commission.

29. The Commission received administrative, logistical and security support from MINUSMA that was essential for the fulfilment of its mandate. In particular, MINUSMA mobilized the financial resources it needed, including funding from the Benelux countries (Belgium, Netherlands and Luxembourg) through the trust fund mechanism. Under the authority of the Special Representative of the Secretary-General, the sections of MINUSMA contacted generally cooperated with the Commission, as exemplified by the Human Rights and Protection Division and the Justice and Corrections Section, whose mandates reflect the same concerns as those of the Commission. The Commission welcomes the cooperation and support it received from United Nations entities, including the Office of the High Commissioner for Human Rights (OHCHR) and UN-Women. Many governmental and non-governmental organizations responded favourably to its various requests. The Commission salutes the courage of the victims and witnesses and thanks them for agreeing to participate in the work of documenting and seeking the truth, and for sharing their experiences with the Commission in an environment marked by threats and fears that were sometimes expressed.

(D) Confidentiality and protection of persons who cooperated with the Commission

1. Confidentiality

[20]Terms of reference, para. 6. See also terms of reference, paras. 7-8.

[21]Decree No. 2018-0796/PM-RM of 8 October 2018, appointing the focal point for the international commission of inquiry called for in the Agreement on Peace and Reconciliation in Mali, which emanated from the Algiers process; Letter dated 14 March 2018 from the Permanent Mission of the Republic of Mali to the United Nations addressed to Jean Pierre Lacroix, Under-Secretary-General for Peacekeeping Operations. An office of the focal point was also established to assist the focal point. See Decree No. 2019-0021/PM-RM of 17 January 2019, on the establishment, organization and operation of the office of the focal point for the international commission of inquiry provided for in the Agreement on Peace and Reconciliation in Mali, which emanated from the Algiers process. The office of the focal point comprised an investigation assistant, a human rights assistant and a military officer.

[22]The Commission submitted many formal and informal requests for cooperation to the focal point and held several working sessions with the secretariat. For example, see letter dated 8 February 2019 from the secretariat of the International Commission of Inquiry for Mali addressed to the focal point; note verbale dated 11 December 2018 from the secretariat of the International Commission of Inquiry for Mali addressed to the focal point; meeting with the focal point of 3 December 2019, during which a list of requests was transmitted; e-mail dated 9 December 2019 from the military adviser of the Commission addressed to the military officer in the office of the focal point.

30. As prescribed in its mandate, the Commission conducted its work in an objective, independent and impartial manner. In particular, it applied the best practices established for commissions of inquiry and fact-finding missions, as described in the 2015 OHCHR publication entitled "Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law - Guidance and Practice".

31. The Commission thus sought and obtained the informed consent of witnesses, victims and other sources to use the information they provided, while guaranteeing their confidentiality. The information provided by the various sources was cited only with their consent and only to the extent that its disclosure would neither cause the sources to be identified nor cause them any other harm.

32. The Commission preferred not to disclose in this report the identity of witnesses, victims and other sources, with the exception of some victims whose real names had already been publicly reported through other channels. The Commission also chose not to mention certain details that could be used to identify victims or witnesses, such as specific locations, exact dates and the particular circumstances of certain events.[23]

33. The Commission also developed specific rules of confidentiality concerning the receipt, use and storage of documents and information transmitted to it by third parties. In addition, all members of the secretariat signed a solemn declaration upon taking up their posts, undertaking to respect the confidentiality of any information they obtain in the course of their work with the Commission.

2. Protection of persons who cooperated with the Commission

34. The Commission's terms of reference contained specific provisions on the protection of victims and persons providing information to the Commission.[24] In implementing that aspect of the terms of reference, the Commission drew on the OHCHR flagship publication on commissions of inquiry and fact-finding missions[25] and on the experiences of other commissions and fact-finding missions on the subject. It also took into consideration the good practices of the various actors who had conducted human rights investigations in Mali or who were in regular contact with victims, witnesses and sources.

35. When the members of the Commission first visited Mali in October 2018, the Government of Mali and the other signatories to the Peace and Reconciliation Agreement undertook to ensure the security of persons cooperating with the Commission. At the request of the Commission, the

[23] That information is available in a confidential annex and in the Commission's database on request for future investigations or judicial proceedings.

[24] Terms of reference, paras. 10-11 (10. “The competent Malian authorities shall be responsible for the protection of those who cooperate with the Commission and their family members. The safety and security of all such persons further depend on the cooperation of all parties concerned. The Commission does not, in and of itself, have the means to guarantee the protection of such individuals and their families from threats or retaliation due to their cooperation with the Commission. The Commission will nevertheless take all necessary measures within its power to ensure their protection, including by seeking support from MINUSMA. To that end, the Commission shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work and thereafter, including confidentiality requirements. 11. Upon commencing its work, the Commission will consult the competent authorities and the parties concerned so as to activate an early warning and support system for victims and persons who cooperate with the Commission and their family members in case of danger or threat proffered against them. The Commission may also request the support of MINUSMA to this effect.”

[25] OHCHR, Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law - Guidance and Practice, 2015, pp. 83-92.

focal point proposed a support mechanism to ensure that persons cooperating with the Commission were protected where necessary.[26]

36. The Commission adopted preventive and precautionary measures[27] integrating the gender perspective, to ensure the protection of its interlocutors, in particular to prevent their cooperation from becoming known or made public. It also instituted an internal mechanism and methodology for addressing concrete and current protection situations, in collaboration with the different actors. Thanks to that preventive methodology, the Commission did not have to face cases of persons threatened for cooperating with the Commission.

37. The absence of threats against individuals for cooperating with the Commission does not mean that there were no threats against witnesses and victims of violations, abuses and crimes in Mali. Some sources, witnesses and victims reported threats they had suffered in the past and fears for their safety if judicial proceedings were to succeed.[28] The publication of the present report and the legal proceedings that may ensue may generate a security risk for those who collaborated with the Commission and, more broadly, for those connected with the cases documented in the report. The Commission calls on the Government of Mali and the other signatories to the Peace and Reconciliation Agreement to ensure the safety of all persons associated with the cases documented by the Commission.

(E) Saving and archiving of information

38. All public and confidential documents collected by the Commission, interviews with victims, witnesses and other sources, as well as information on alleged perpetrators were saved and archived in a confidential and secure database made available to the Commission by OHCHR.[29] Only members of the Commission and some members of the secretariat had access to the database and the ability to modify it.

39. The confidential database is entrusted to the custody of OHCHR. Paragraph 15 of the terms of reference provides that the Secretary-General shall decide on any questions regarding access to the archives of the Commission as well as on any conditions that he deems necessary. The Commission is of the view that the information contained in the database may be shared with any appropriate body and competent jurisdiction, in strict compliance with OHCHR criteria and procedures. In particular, access to such information should be granted only to the extent that victims, witnesses or sources have given their prior consent to the sharing of the information contained in their testimony or in documents transmitted by them.

V. Applicable law

40. In accordance with its mandate to investigate "allegations of abuses and serious violations of international human rights law and international humanitarian law" and "to establish the facts and circumstances of the commission of such abuses and violations, including those that may constitute international crimes", the Commission conducted its investigations and prepared the present report within the contours of international human rights law, international humanitarian law and international criminal law. In addition to briefly presenting the applicable law in this section, the Commission found it useful to annex to the report a detailed note on the law applicable to the situation in Mali (annex 1).

[26] Meeting with the focal point, 6 February 2019.

[27] Briefing book of the Commission, internal document.

[28] See the part on protection of the Commission's database.

[29] Information was archived in accordance with the Secretary-General's bulletin on the classification and handling of sensitive or confidential information (ST/SGB/2007/6 of 12 February 2007).

41. International human rights law is the body of rights and freedoms enshrined and guaranteed by international conventions (to which Mali is a party) and customary law relating to human rights (which is applicable to all States). An exhaustive list of the many conventions to which Mali is a party is included in the annex on applicable law attached to this report. Among the main rights and freedoms that Mali is required to respect, protect and uphold is the right to life, which includes the prohibition of extrajudicial executions or the use of lethal force by State officials, except where it is absolutely necessary for the protection of law and order. Human rights also include the right to physical and mental integrity, which protects against such acts as torture, rape and forced marriage; the right to liberty and security, which prohibits arbitrary arrest and guarantees, for example, the right to challenge an arrest; access to justice and the right to a fair trial; freedom of thought, religion, opinion and expression; the right to education; and the right of children not to be associated with armed conflict.

42. International humanitarian law, also referred to as the "law of armed conflict", is a set of rules applicable to situations of "armed conflict" that aim to limit the effects of armed conflict by protecting persons who are not, or are no longer, participating directly in hostilities, by limiting or regulating the means and methods of warfare. These rules vary considerably, depending on whether the conflict is classified as an international armed conflict or a non-international armed conflict. The rules concerning non-international armed conflict, which are more limited in number, are found mainly in article 3 common to the four Geneva Conventions of 1949 (to which Mali has been a party since 24 May 1965) and Additional Protocol II of 1977 (to which Mali has adhered since 8 February 1989), which provide fundamental guarantees for persons who are not, or are no longer, participating directly in hostilities. For reasons explained later in this report, including the prolonged violence between the authorities of the Government of Mali and organized armed groups, or between and among organized armed groups, the situation in Mali throughout the period covered by the Commission's terms of reference can be characterized as a non-international armed conflict.

43. International criminal law is the set of international rules designed to proscribe and punish individuals responsible for international crimes and to impose on States the obligation to prosecute and punish such crimes. The Rome Statute of the International Criminal Court (Rome Statute) is the most comprehensive and detailed document codifying international crimes. As Mali has been a party to the Rome Statute since 16 August 2000, the provisions of the Statute apply to all the acts investigated by the Commission. The international crimes described in the Rome Statute are the crime of genocide, the crime of aggression, crimes against humanity and war crimes. The Commission considers that only the latter two are relevant to the analysis of the situation in Mali.

44. Crimes against humanity, listed in article 7 of the Rome Statute, consist of a set of specific acts, including murder, deportation or forcible transfers of populations, torture, rape or sexual slavery, persecution, enforced disappearance of persons and other inhumane acts of a similar character committed as part of a widespread or systematic attack directed against any civilian population.

45. War crimes are a set of prohibited acts committed in international or non-international armed conflicts. War crimes specific to non-international armed conflicts, listed in article 8, paragraphs (2)(c) and (e), of the Rome Statute, also include acts such as violence to life and person (murder, mutilation, cruel treatment, torture, rape) and outrages upon personal dignity (in particular humiliating and degrading treatment), committed against persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat. These crimes also include acts specific to armed conflict, such as killing treacherously a combatant adversary, declaring that no quarter will be given, and using weapons prohibited by the Geneva Conventions. Unlike crimes against humanity, war crimes can only occur in the context of armed conflict, not in peacetime.

46. International criminal law establishes not only the individual responsibility of the perpetrator, the co-perpetrator and the person who ordered, solicited, encouraged or assisted in the commission of the crime, but also that of his or her superior who could or should have prevented or punished the commission of such crime.

VI. Context and causes of the 2012 Malian crisis

47. The Commission notes that since gaining independence in September 1960,[30] Mali has experienced four rebellions led mainly by the Tuaregs (1963, 1990, 2006 and 2012), three coups d'état (1968, 1991 and 2012), five peace agreements (1991, 1992, 2006, 2013 and 2015)[31] and inter- and intra-community conflicts. The armed uprising that began in January 2012 in the northern regions of Mali is thus part of a succession of cyclical crises that have befallen the country since its independence.

48. The Commission was aware of the temporal mandate entrusted to it by the Secretary-General, which unambiguously ran from 1 January 2012 to 19 January 2018. However, in order to gain a better understanding of the situation in Mali since 2012, the Commission examined the context of the successive crises that Mali has experienced since the 1960s and sought to identify the structural elements underpinning the 2012 crisis, as well as its consequences. To that end, it examined the many studies available on the causes of the crises in Mali, met with political and administrative officials and representatives of the economic and social sectors, and held a workshop on the various Malian crises and their causes.[32]

49. That analysis showed that the 2012 crisis was the product of a web of interrelated historical, social, political, economic, environmental[33] and religious causes dating back to the colonial period. Successive regimes since independence have failed to provide answers commensurate with the depth of the causes. On the contrary, the lack of adequate response by successive Governments to the causes and claims that provided fodder for previous rebellions and crises have only made them worse over time.

50. Almost all the people interviewed by the Commission, including within the Malian Government, believed that the previous Tuareg rebellions and the 2012 rebellion were, above all, the result of a governance deficit.[34] The problem of governance relates in particular to the way in

[30] The independence of Mali was declared on 22 September 1960 following the break-up of the Federation of Mali, which comprised Mali and Senegal between 1959 and 1960. The Federation had itself acceded to independence on 20 June 1960.

[31] Agreement on the cessation of hostilities between the Government of the Republic of Mali, on the one hand, and the Mouvement Populaire de l'Azawad and the Front Islamique Arabe, on the other, Tamanrasset, 6 January 1991 (Tamanrasset agreement); the national pact concluded between the Government of Mali and the Mouvements des fronts unifiés de l'Azawad enshrining the special status of the north of Mali, Bamako, 11 April 1992 (1992 National Pact); Algiers agreement for the restoration of peace, security and development in the Kidal region, Algiers, 4 July 2006 (2006 Algiers agreement); Ouagadougou preliminary agreement (2013); and the Peace and Reconciliation Agreement (2015).

[32] In addition to the research and literature cited below, the Commission conducted some 15 interviews specifically on the causes and context of the 2012 Malian crisis and collected relevant information through interviews with sources, witnesses and victims. In September 2019, the Commission held an expert workshop on the structural causes of the 2012-2018 crisis, with the participation of a range of independent personalities, as well as government officials and the groups that signed the Peace and Reconciliation Agreement. See proceedings of the workshop on the context of the Malian crises, 19 September 2019.

[33] In particular the major droughts of the 1970s and 1980s and the scarcity of natural resources owing to global warming and population growth, which exacerbate land conflicts and limit communities' access to resources.

[34] For example, testimonies Nos. 137, 397 and 500; Proceedings of the workshop on the context of the Malian crises, September 19, 2019. See also CVJR, Les causes profondes du conflit ayant affecté le Mali de 1960 à nos jours, May 2017.

which Governments since independence have handled issues concerning the political and economic integration of the north and the south in a huge territory with very stark community, cultural and climatic differences.[35]

51. Many sources alleged that the State had not managed the north of Mali in a way that met the political, economic and security expectations of the people of the north, thus leading to its marginalization. They also explained that, from independence to the advent of democracy in 1992, the northern regions were under military administration and the State was not fully present in the life of the communities in those regions, in terms of the provision of basic services, such as education and health care. According to some experts, the northern regions remained largely excluded from economic development because of the military administration and the extensive droughts of the 1970s and 1980s, which led to a mass exodus of people from the north to neighbouring countries. They said that even the advent of democracy did not help to reverse that trend, since State presence in the northern regions did not improve significantly. On the contrary, the situation paved the way for the advent of Al-Qaida in the Islamic Maghreb (AQIM) in Mali and the development of trafficking in the 2000s.[36]

52. Another aspect of poor governance that is fuelling the crises is endemic corruption. Many reports and studies have shown that significant corruption exists in all areas of the Malian administration, including in the judicial system.[37] In a 2017 report, Transparency International described Mali as one of the most corrupt countries in the world,[38] while Afrobarometer indicated in one of its studies that corruption is the second leading cause of the conflict in Mali.[39]

53. Poor governance is also apparent in the way that previous rebellions were handled, including in the implementation of peace agreements. With the exception of the 1963 crisis, all previous crises ended with the signing of a peace agreement. Some people in northern Mali had high hopes regarding the Tamanrasset agreement and the 1992 National Pact, because of the level of autonomy planned for the Kidal region and the decentralization policies contemplated. However, they also believe that implementation of the National Pact has been incomplete and largely inadequate, leading them to question whether subsequent agreements could be implemented in good faith.[40]

54. The Commission is of the view that impunity for abuses committed during previous crises was one of the triggers of the 2012 crisis. Each crisis since 1960 has produced its share of abuses, violations and crimes, with the civilian population being the primary victim. International and national organizations have documented abuses committed against the civilian population attributable to successive Governments and armed groups active during previous crises.

[35] Some believe that that problem was exacerbated by the centralized nature of governance in Mali, which was inspired by the model of political organization of the colonizing country and the policy of standardization of citizenship around the Nation-State. See, for example, CVJR, Les causes profondes du conflit ayant affecté le Mali de 1960 à nos jours, May 2017, pp. 11-12.

[36] Proceedings of the workshop on the context of the Malian crises, 19 September 2019; ICG, Mali: Avoiding Escalation, Africa Report No. 189, 18 July 2012, p.2. See also meeting on the context of the crisis with representatives of CMA, May 2019.

[37] Testimony No. 137; Le Monde Afrique, Au Mali, le système est infesté par la corruption et les citoyens y sont habitués, 1 August 2019. See also the section of the present report entitled “Corruption in the Malian judicial system”, under the heading “Fight against impunity”.

[38] Transparency International, Mali: Overview of corruption and anti-corruption, 19 October 2017.

[39] Massa Coulibaly, Perceptions populaires des cause et conséquences du conflit au Mali, 2014.

[40] International Peace Institute, Arthur Boutellis and Marie-Joëlle Zahar, A Process in Search of Peace: Lessons from the Inter-Malian Agreement, January 2018, pp. 3-4; CVJR, Les causes profondes du conflit ayant affecté le Mali de 1960 à nos jours, May 2017, p. 54; ICG, Mali: Avoiding Escalation, Africa Report No. 189, 18 July 2012, p. 4; Proceedings of the workshop on the context of the Malian crises, 19 September 2019; Ambéïry Ag Rhissa, note entitled “Azawad : quatre rébellions, trois accords, trois échecs”, undated, p. 1.

Although the Commission did not investigate those allegations, it was able to assess the extent of the abuses committed from 1960 onwards thanks to those documentation efforts.[41]

55. The regime established by the first President of Mali, Modibo Keïta (1960-1968), was authoritarian in its handling of the first Tuareg rebellion that broke out in 1963 in the Kidal region and hostile to any form of political opposition. Although the regime defeated the first rebellion in military terms, that victory came at the cost of numerous abuses committed against the people of Kidal and the destruction of their livelihoods. In order to isolate the rebels, the Malian Armed Forces had established a "no-go" area around Kidal. Water points were controlled or blocked, poisoned or booby-trapped using grenades. Men arrested in the "no-go" area were tortured, held in Kidal prison in inhumane conditions and sometimes executed in front of their family members, who were forced to applaud. Livestock found in the "no-go" area was slaughtered. Rape and forced marriages of Arab-Tuareg girls taken from the north to the south of the country were also reported.[42] Elsewhere in Mali, the regime violently and lethally repressed all opposition, and the single party's people's militia committed violence and theft against the population.[43]

56. After the coup d'état of 19 November 1968 in which Moussa Traoré came to power, another authoritarian regime was established. The regime repressed political opponents by detaining them or sending them to perform forced labour in the remotest areas of northern Mali (Kidal and Taoudenni), and harshly repressed student movements in 1980. During the severe droughts that hit the northern regions of Mali (from 1973 to 1974 and from 1983 to 1984), which decimated herds and caused famine, the Government of Mali did not provide adequate assistance to those affected in the north of the country. Those people never received a large proportion of the international humanitarian aid intended for them; that aid was diverted to Bamako, creating a feeling of resentment among them that remains strong to this day.[44]

57. The outbreak of the second rebellion in 1990 was accompanied by allegations of abuses committed by the rebel groups and clashes and incidents between the splintering rebel groups and against Ganda Koy, a pro-Government militia. *Operation Kokadjè*, whose name means "clean thoroughly", was launched to put an end to the rebellion. While the official aim of the operation was to combat the rebellion, in practice no distinction was made between the Tuareg

[41] In addition to the research carried out by historians, the TJRC has mapped out human rights violations committed in Mali from 1960 to 2017 (not publicly available). Other types of documentation include public documents, such as all Amnesty International's annual reports, and unpublished surveys conducted by the Association pour les réfugiés et les victimes des répressions de l'Azawad on crimes and abuses committed in Mali from 1960 to 2013.

[42] The 1963 repression of the civilian population led to an exodus and the destruction of the local economy. People left for Algeria, Libya and Saudi Arabia. Choguel Kokalla Maïga and Issiaka Ahmadou Singaré, Les rébellions au Nord du Mali, des origines à nos jours, (June 2018, p. 92); Research paper by the Association pour les réfugiés et les victimes des répressions de l'Azawad on crimes and abuses committed in Mali from 1960 to 2013, pp. 3-5; Alternatives Internationales, Pierre Boilley, La révolte oubliée des insurgés de Kidal, June 2013; Mariko Amidou, Mémoire d'un crocodile, du sujet français au citoyen malien, Editions Donniya, 2001, pp. 52, 63-64; Proceedings of the workshop on the context of the Malian crises, 19 September 2019; CVJR, Les causes profondes du conflit ayant affecté le Mali de 1960 à nos jours, May 2017, p. 33. See also Ambéïry Ag Rhissa, Région de Kidal : Essai de Chronique d'une instabilité récurrente à large "spectre" (draft No. 4), pp. 9-10; Meeting on the context of the crisis with representatives of CMA, May 2019.

[43] See the section of the present report entitled "History of the Malian Armed Forces", under the heading "Main actors in the 2012 Malian crisis".

[44] Humanitarian aid intended for those affected was reportedly misappropriated; "villas de la sécheresse" [drought villas"], a term that is keenly recalled by Malians, is a reference to houses that were allegedly built using funds obtained from the misappropriation of food aid donated in response to the 1973-1974 drought. See Jabir Touré, La corruption au Mali : causes, conséquences et solutions, 18 December 2017; Document of the Coordination des mouvements de l'Azawad, La CMA lance le SOS sécheresse dans l'Azawad, 28 May 2014; CVJR, Les causes profondes du conflit ayant affecté le Mali de 1960 à nos jours, May 2017, p. 34.

civilian population and rebel fighters.[45] Many cases of reprisals attributable to the Malian Armed Forces against nomadic peoples who were seen as indistinct from the rebels were reported by human rights organizations and researchers. Allegations concerning the destruction of camps, acts of torture, rape, and a number of mass executions, in which hundreds of Tuareg and Arab men and also women and children in total were killed, were reported in the regions of Kidal, Gao and Timbuktu.[46]

58. Since independence, and even with the advent of democracy in the 1990s, the Government of Mali has done very little to address violations, abuses and crimes related to past crises, regardless of the perpetrators involved. The failure to prosecute the perpetrators of those crimes may be due to the same challenges identified by the Commission in its investigations relating to the period 2012-2018, namely, a judicial system unable to function effectively because of a lack of resources and continuing corruption, a lack of willingness on the part of the State authorities at the highest level to make justice a priority, and the use of the justice system for political ends.[47]

59. Although the interlocutors interviewed by the Commission all seemed to agree on the abuses committed against the people during the first rebellion, the Commission notes that Mali has not formally acknowledged the facts concerning all the crimes committed during that period. The law on national reconciliation adopted in 2019, which was based on the conclusions of the national reconciliation conference held in Bamako from 27 March to 2 April 2017, provides for the declaration of a "national day of forgiveness" and a "national week of reconciliation", and for the establishment of an independent scientific committee responsible for drafting the "inclusive general history of Mali", to be the source used for textbooks throughout the country.[48] Although those provisions may seem premature since they do not take into account any recommendations that the Truth, Justice and Reconciliation Commission (TJRC) may make in this regard, the Commission considers that both the provisions and the future recommendations of the TJRC, which is best placed to comment on those matters, could form the basis for a memorialization process in Mali if they are fully and sincerely implemented by the Government of Mali.

60. Regarding the allegations of abuses perpetrated during the Tuareg rebellion of the 1990s, the 1992 National Pact provided for the establishment of an independent commission of inquiry. The details of its operations were set out in the Pact.[49] However, the commission of inquiry

[45] The ideological confusion within *Operation Kokadjè* was well documented in several telegrams transmitted through the chain of command. For example, one telegram stated: "Protecting innocent civilian populations does not mean accepting their complicity. You are therefore ordered to kill without mercy anyone suspected of complicity who refuses to provide information". Telegram quoted in Pierre Boilley, Les Touaregs Kel Adagh. Dépendances et révoltes : du Soudan français au Mali contemporain (16 April 2012, p. 467). Lessons learned during the second conflict with Burkina Faso in 1985 contributed to greater operational efficiency in terms of logistical support and the clarity of orders and their implementation. *Operation Kokadjè* was considered by a significant proportion of the Malian Armed Forces to be a well-planned and well-executed operation. The Tuareg people perceived the operation as a persecution of the Tuareg civilian population (testimony No. 260).

[46] Research paper by the Association pour les réfugiés et les victimes des répressions de l'Azawad on crimes and abuses committed in Mali from 1960 to 2013, pp. 7-27; Amnesty International, Annual Report 1991, pp. 151-153; Amnesty International, Mali: Extrajudicial Executions/Legal Concern, 23 July 1991; Amnesty International, Mali: Ethnic conflict and killings of civilians, 20 September 1994; Pierre Boilley, Les Touaregs Kel Adagh. Dépendances et révoltes : du Soudan français au Mali contemporain, Paris, Editions Karthala, 1999, pp. 457, 468. See also Ambéïry Ag Rhissa, Région de Kidal : Essai de Chronique d'une instabilité récurrente "à large spectre" (draft No. 4); Document from CMA entitled "Crimes commis par l'armée malienne contre la population de l'Azawad", undated; Meeting on the context of the crisis with representatives of CMA, May 2019.

[47] See the section of the present report entitled "Fight against impunity".

[48] Articles 7 to 10 of Act 2019-42 of 24 July 2019, on the law on national reconciliation.

[49] 1992 National Pact, pp. 289-291.

never saw the light of day. Instead, Mali enacted Act No. 1997-016 of 7 March 1997, which granted amnesty for all Criminal Code offences committed in the country in connection with the rebellion between 29 June 1990 and 27 March 1996.[50] The general amnesty law made the establishment of an independent commission of inquiry as provided for in the National Pact obsolete. Several people interviewed by the Commission referred to the negative impact of that law, which had failed to address the need for justice for victims of abuses and serious rights violations and had strengthened the culture of impunity in Mali.[51]

61. The Commission notes that the establishment of the TJRC, pursuant to article 46 of the Peace and Reconciliation Agreement, whose work is ongoing, represented the first attempt by Malian stakeholders to seriously address the issue of past crimes. It was mandated to "contribute to the establishment of lasting peace through a search for truth, reconciliation and consolidation of national unity and democratic values" by documenting cases of serious human rights violations committed between 1960 and 2013.[52] However, the TJRC has chosen to focus on the plight of the victims and to set aside the question of the responsibility of the perpetrators.[53] Thus, even when it has completed its work and accomplished all its objectives, it will still not be able to satisfy the expectations for criminal or transitional justice and the rights of victims of the abuses, violations and crimes committed during previous crises. The work of the TJRC must therefore not prevent victims and their families from being able to institute criminal proceedings regarding the abuses, violations and crimes committed during previous crises, particularly where those may constitute international crimes to which amnesties or statutes of limitations do not apply.

62. Throughout the Commission's work, the representatives of the Coordination des mouvements de l'Azawad and the Plateforme repeatedly stated the need to address the abuses, violations and crimes committed during previous crises against the people in the northern regions of Mali. In that regard, they deplored the fact that the Commission's temporal mandate began in 2012, rather than in 1960 as they had requested. In April 2018, the Coordination des mouvements de l'Azawad wrote to the Secretary-General to express its satisfaction with the establishment of the Commission and to raise a number of concerns. In particular, it believed the Commission's temporal mandate should have begun in 1960.[54] The same need was also clearly expressed in the testimonies gathered by the Commission during its investigations, particularly from members of the Tuareg community.[55]

63. The failure to take robust action against the perpetrators of abuses, violations and crimes committed in connection with previous crises has fuelled the resurgence of crises and rebellions in Mali. It has contributed to the formation of a collective memory among some of the Tuareg people that drives them to join uprisings and repeat the cycle of rebellion. From one crisis to the next, that inaction only deepens the lack of understanding between some of the communities in the north and the Government of Mali.[56] The Tuareg men who took up arms in the 1990s were

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[50] Act No. 1997-016 of 1997, on amnesty, 7 March 1997.

[51] Proceedings of the workshop on impunity, 21 September 2019.

[52] Order No. 2014-003/P-RM of 15 January 2014 establishing the TJRC.

[53] The Chair of the TJRC explained to the Commission that its approach was to focus on victims and reparations. The public hearings of the TJRC, which began in December 2019, are focusing on the testimony of victims, but will not, to the Commission's knowledge, involve hearing from the alleged perpetrators or bringing them face to face with the victims. Chair of the TJRC, Proceedings of the workshop on the context of the Malian crises, 19 September 2019. See also Report of the Independent Observer: Observations on the Implementation of the Agreement on Peace and Reconciliation in Mali, Emanating from the Algiers Process, April 2019, pp. 8-9.

[54] Letter to the Secretary-General of the United Nations on the creation and mandate of the International Commission of Inquiry for Mali, 29 April 2018. See Meeting of the Commission secretariat with representatives of the Plateforme, 28 January 2019.

[55] See, for example, testimonies Nos. 551, 252 and 260.

[56] Proceedings of the workshop on the context of the Malian crises, 19 September 2019.

the children of those affected in the 1960s, who were seeking recognition, justice or revenge for their families and communities. Similarly, the Tuareg combatants of the 2006 and 2012 rebellions were children during the conflict of the 1990s, who grew up, in Mali or in exile, believing that their parents paid for the conflict of the 1990s with their lives.[57]

64. The Commission is of the opinion that, until the Malian authorities adequately address the issue of past crimes, it is difficult to envisage an end to the cycle of violence that has taken hold in the country since 1960. Impunity for past crimes was such a significant trigger of the 2012 crisis that there is little doubt that if it is not satisfactorily addressed, the cycle of violence will continue beyond 2012.

65. The Commission's investigations also show that persistent impunity in Mali is one of the factors fuelling the serious inter-community violence that has been taking place in the central part of Mali since 2015 and that has worsened considerably since 2018. In the Commission's view, if the judicial authorities had seriously and credibly investigated and addressed the violence between the Fulani, Dogon and Bambara communities in 2016 and 2017, they could have limited people's frustration with the State's failure to protect them from the perpetrators of crimes. They could also have helped show people that the rule of law existed in Mali, that the State stood with them and that it was trying to protect them, regardless of the community to which they belonged. In addition, they could have helped limit the creation of self-defence groups and put an end to the spiral of inter-community violence into which the central part of Mali has now descended.[58] By the same reasoning, a failure to appreciate the importance of properly rendering justice for abuses committed after January 2018, the end of the Commission's temporal mandate, could exacerbate the situation in regions hitherto relatively untouched by inter-community conflict.

VII. Main actors in the 2012 Malian crisis

66. In this section, the Commission provides an overview of the main actors in the 2012 crisis in Mali, namely, the Malian defence and security forces, armed groups, self-defence groups and foreign and international forces present in Mali since 2013. In the section entitled "Establishment of the facts and circumstances", it reports on the entities and individual perpetrators it was able to link to the specific cases documented. In addition, in a confidential annex, the Commission provides a list of the alleged perpetrators of the violations, abuses and crimes that it was able to identify.

(A) Malian defence and security forces

1. Malian Armed Forces

(i) History of the Malian Armed Forces

67. The Malian army was created on 1 October 1960, one week after the Republic of Mali gained independence.[59] Its creation was announced in a presidential decree signed by Modibo

[57] ICG, Mali: Avoiding Escalation, Africa Report No. 189, 18 July 2012, p. 8; International Peace Institute, Arthur Boutellis and Marie-Joëlle Zahar, A Process in Search of Peace: Lessons from the Inter-Malian Agreement, January 2018; Proceedings of the workshop on the context of the Malian crises, 19 September 2019; testimony No. 267; Meeting on the context of the crisis with representatives of CMA, May 2019.

[58] See case No. CEI83; case No. CEI90; case No. CEI91; case No. CEI95.

[59] Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, pp. 21-22; Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019.

Keïta and in a speech by Captain Sékou Traoré, who would be its first Chief of Staff.[60] In late 1960, he was replaced by Colonel Abdoulaye Soumaré. In August 1961, following the departure of the last French soldiers, Modibo Keïta forged close ties with the Union of Soviet Socialist Republics (USSR), and the first Soviet instructors arrived in Mali with major pieces of military equipment. The Malian Armed Forces were divided into nine stand-alone units that comprised a total of 3,429 men across all ranks by November 1961.[61]

68. A number of the officials in Modibo Keïta's socialist regime took a dim view of what they considered to be the colonial mentality of the Malian soldiers trained by French officers. That mistrust led some political officials to oppose the very existence of an army considered to be costly and irrelevant, and resulted in the creation of a people's militia that was intended to replace it over time. The people's militia, augmented by a "vigilance brigade", both affiliated with the single party, was trained and led by soldiers, including Lieutenant Moussa Traoré. It was soon accused of committing abuses against the civilian population of Bamako.[62] Moreover, the regime had no strategic vision for the Army. Many troops were sent to the borders with Algeria and Niger to keep them away from Bamako and avoid possible conflicts between the Army and the people's militia.

69. In 1963, when the first Tuareg rebellion broke out in the Kidal region, the Malian Armed Forces created a "no-go" area to isolate the rebels from the population, a strategy that enabled them to crush the revolt. However, that success came at the cost of abuses committed against the civilian population and the loss of their livelihoods. With the end of the revolt, the head of the Army, Abdoulaye Soumaré, was promoted to General, but died in October 1964. He was replaced by Colonel Sékou Traoré, who started reforming the Army in November 1966.

70. While the Army was occupied in the north of the country, the people's militia gain undisputed power in Bamako. However, the abuses it committed and the country's economic problems spelled the end of Modibo Keïta's regime. On 19 November 1968, a group of junior officers took power by force. That coup d'état enabled the Army to gain a foothold in politics. Moussa Traoré headed the Military Committee for National Liberation (CMLN) and was President of Mali from 1969 to 1991. After the coup, officers from the old regime were sent into early retirement. The Army gradually separated into clans, with divisions apparent even among the soldiers who had participated in the coup. During the 1970s, the military system was undermined by internal conflict, with inter-clan fighting that sapped its strength.[63]

71. Mali emerged from the two brief conflicts between Mali and Upper Volta (now Burkina Faso) in 1974 and 1985 with the military edge, and its Army was perceived as one of the most powerful in the region. Nevertheless, the lack of training offered to its officers and soldiers was beginning to have a negative impact. In addition, the Soviet military equipment at its disposal was not always maintained and did not include small but crucial items, such as maps.[64]

[60] By means of Decree No. 249/60 of 26 September 1960, the territorial headquarters of the Sudanese Republic became the headquarters of the Republic of Mali. See Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019, p. 4; Info Matin, Armée malienne : 56 ans de parcours, 24 January 2017.

[61] These nine units, excluding the Presidential Guard, formed four stand-alone commando battalions stationed in Ségou, Kayes, Kati and Gao, respectively.

[62] See Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, pp. 21-22, and 24.

[63] Info Matin, Armée malienne : 56 ans de parcours, 24 January 2017; Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, p. 24; Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019, p. 10.

[64] Info Matin, Armée malienne : 56 ans de parcours, 24 January 2017; Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, p. 23.

72. The Malian Armed Forces began to take on their current configuration following the 1980 reorganization, when three military regions known as “defence zones” were created in Gao, Ségou and Kati.[65] However, that reform did not include any major changes to the maintenance of equipment or the training of soldiers, whose potential professionalization was considered a threat to the regime’s survival. During the same period, the commando parachute regiment (RCP) became the Presidential Guard of General Moussa Traoré’s regime.[66]

73. A second rebellion broke out in 1990 in the northern regions of Mali and did not end until the “Flame of Peace” ceremony in Timbuktu in March 1996, during which weapons were burned and ex-combatants from the rebellion were incorporated into the defence and security forces. *Operation Kokadjè*, which means “clean thoroughly”, had been launched to put an end to the rebellion. While the main aim of the operation was to fight the rebels, ideological confusion regarding its implementation led in some cases to a failure to distinguish between the Tuareg civilian population and rebel fighters.[67] Meanwhile, demonstrations against the regime and for the establishment of democracy had multiplied in Bamako. While the rebellion was in progress, Amadou Toumani Touré, supported by the commando parachute regiment he led, carried out a coup d'état and assumed the position of Head of the Transitional Committee for the Salvation of the People. He signed the 1992 National Pact before ceding power to the first elected President of Mali, Alpha Oumar Konaré. With the advent of democracy, military officers believed that their careers depended on their political and partisan commitment, which diverted attention away from the crucial task of ensuring the smooth running of military operations. Training and the maintenance of equipment became mired in indifference and neglect. Many soldiers in the Malian Armed Forces consider that the Army’s decline dates back to that period.[68]

74. In September 2001, General Amadou Toumani Touré retired and entered politics as a candidate in the 2002 presidential election. He was elected President of the Republic on 12 May 2002 and re-elected in April 2007. In 2006, a new Tuareg rebellion erupted and the State rapidly initiated talks leading to the 2006 Algiers agreement, which resulted in the incorporation of around 3,000 ex-combatants into the defence and security forces, some of them into the officer ranks.[69] Following the fall of Muammar Gaddafi in August 2011, many Tuaregs who had been serving in the Libyan army, and whose military training and experience were potential destabilizing factors for Mali, returned to Mali. The Malian Armed Forces then devised *Operation Djigui Tugu*, which means “giving renewed hope”, and welcomed as many of those fighters as possible into its ranks. The operation was only partially successful, with many of the Tuaregs who returned from Libya ultimately deciding to join the Mouvement national de libération de l’Azawad (MNLA) and later Ansar Eddine.

ii. Organization of the Malian Armed Forces between January 2012 and January 2018

75. At the beginning of the conflict in January 2012, the Malian Armed Forces launched *Operation Badenko*, meaning “fraternity”, which continued despite the coup d’état and lasted until August 2013, and covered the regions of Kidal, Gao and Timbuktu. The aim of the operation was to have the Malian

[65] Order No. 88-02/P-RM, of 21 March 1991, ratified by Act No. 89-22/AN-RM of 1 March 1989.

[66] From 1984, the regiment was led by Lieutenant-Colonel Amadou Toumani Touré.

[67] In addition, in 1994, the Malian Armed Forces began to use proxies by supporting the Mouvement Populaire Ganda Koy, a group created by former soldiers that consisted mainly of members of the Songhai community, a dark-skinned community from the northern regions of Mali.

[68] Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, p. 25; testimony No. 532.

[69] Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, p.28.

Armed Forces patrol those areas in order to ensure civil defence and to protect troops, persons and their property. In May 2012, Colonel (now General)[70] Dacko and his deputy, Colonel (now General) Abdoulaye Coulibaly, who is currently Chief of Defence Staff, took command of *Operation Badenko*. According to the former Minister of Defence, Soumeylou Boubeye Maïga, in 2012 the Malian defence and security forces theoretically had 14,000 members, but fewer than 3,000 of them were operational.[71] The political neglect of the Malian Armed Forces since the 1990s was being felt on the ground. Between January and March 2012, despite their efforts, they were defeated repeatedly by MNLA and its allies, the extremist armed groups.

76. The coup d'état of 22 March 2012 was the result of a dispute within the Army concerning the political and military management of the conflict.[72] RCP, which was responsible for protecting President Amadou Toumani Touré, capitulated without strong opposition to the non-commissioned officers and other soldiers leading the coup d'état. Under the leadership of Captain (now General) Amadou Haya Sanogo, the putschists established the National Committee for the Promotion Democracy and State-Building (CNRDRE), which was the supreme authority in Mali from 22 March to 12 April 2012. It was composed of non-commissioned officers[73] and was chaired by Amadou Haya Sanogo, who also served as Head of State.[74] On 12 April 2012, CNRDRE officially turned over power to civilians following the signing of an agreement with the Economic Community of West African States (ECOWAS). However, the influence of CNRDRE on the Transitional Government lasted at least until the election of President Ibrahim Boubacar Keïta in August 2013. The meteoric rise of Amadou Haya Sanogo, who was appointed General in August 2013, and the appointment of a number of members or allies of CNRDRE to positions in the Transitional Government attested to that influence.

77. The coup d'état created confusion and disorganization within the already weak Army. Between 27 March and 2 April 2012, MNLA, Ansar Eddine, AQIM and MUJAO took control of the three largest cities in northern Mali (Kidal, Gao and Timbuktu). Like the rest of the units of the Malian Armed Forces, RCP withdrew but, unlike those of the other units, its members were disarmed. On 30 April

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[70] Presidential Decree No. 2012-089/P-RM of 15 February 2012, on the establishment of *Operation Badenko*, Official Gazette of the Republic of Mali of 24 February 2012, p. 313; Decree No. 2012-251/P-RM of 18 May 2012, on the assignment of officers to *Operation Badenko*, Official Gazette of the Republic of Mali of 1 June 2012, p. 845. Between January and May 2012, the commander of *Operation Badenko* was Brigadier General Kalifa Keita. Decree No. 2012-105/P-RM of 16 February 2012, on the appointment of the commander of *Operation Badenko*, Official Gazette of the Republic of Mali of 9 March 2012, p. 377.

[71] Le Monde Afrique, Une armée malienne tombée en ruines, 4 February 2013. See also Committee on National Defence and the Armed Forces, National Assembly information report on Operation Serval in Mali, No. 1288, 18 July 2013, p. 22; Jeune Afrique, Armée malienne: le difficile inventaire, 18 June 2013.

[72] See case No. CEI36 below.

[73] Pursuant to Order No. 0001 of CNRDRE on the Constitution of the State of Mali of 26 March 2012 (article 37), CNRDRE was to be composed of 26 members of the defence and security forces and of 15 national stakeholders. However, the Committee was never actually formed (testimony No. 430).

[74] Pursuant to Order No. 0001 of CNRDRE on the Constitution of the State of Mali (article 42), the Chair of CNRDRE was to serve as Head of State. As such, he appointed by order the new leaders of the Armed Forces. Some of those leaders, such as Colonel Major Yamoussa Camara, who was appointed Secretary-General at the Ministry of Defence and Veterans Affairs, and Colonel (now General) Dahirou Dembélé, who was appointed Chief of Defence Staff and is currently Minister of Defence and Veterans Affairs, remained in those positions until the summer of 2013. The Commission notes that, at the time of submission of its report, Mali no longer had a Government and it was unclear whether Dahirou Dembélé would be kept in his position.

2012, some RCP officers attempted a counter-coup d'état, which was defeated by CNRDRE.[75] The coup d'état and the attempted counter-coup d'état created distrust and deep divisions among supporters of the two factions in the Armed Forces, divisions which persist to this day.

78. As MNLA declared the independence of "Azawad"[76] in Gao on 6 April 2012, the Malian Armed Forces retreated to the central part of the country, in the regions of Ségou and Mopti, or to the southern part of the country. After gradually driving out MNLA, Ansar Eddine, AQIM and MUJAO took exclusive control of the three regions in northern Mali (Kidal, Gao and Timbuktu) and the northern areas of the regions of Ségou and Mopti. In January 2013, the three groups launched a large-scale coordinated offensive against the southern part of the country. Before reaching Sévaré, they clashed with the Malian defence and security forces in Konna on 9 and 10 January 2013. The commander of *Operation Badenko*, Colonel Major (now General) Didier Dacko, led the battle for Konna. Lieutenant Colonel (now Colonel Major) Abass Dembélé[77] led the volunteer commando group, which played an important role in the battle. The clashes resulted in the deaths of many members of the Malian Armed Forces, which were forced to withdraw. Ansar Eddine, AQIM and MUJAO took control of the locality of Konna. The Transitional Government of Mali requested military assistance from France, which came in the form of *Operation Serval*, launched on 11 January 2013. During the attack on Konna, the three extremist armed groups also launched an offensive on the locality of Diabali, in the region of Ségou. They took control of the city on 14 January 2013 and the Malian Armed Forces, led by Colonel Seydou Sogoba, withdrew.[78] The balance of power was reversed as a result of the intervention of the French forces which, together with the Malian defence and security forces, inflicted heavy losses on Ansar Eddine, AQIM and MUJAO. Within two weeks, the localities of Konna and Diabali and the cities of Gao, Timbuktu and Kidal had been recaptured.[79]

79. In July 2013, interim President Dioncounda Traoré transformed *Operation Badenko* into *Operation Maliba*, meaning "Mali the Great", covering the regions of Timbuktu, Gao and Kidal, the localities from Konna to Tessalit and from Niono to Timbuktu, and the post of Nara. According to its founding decree, the objective of *Operation Maliba* was, within the framework of cross-border, regional and international cooperation, to reduce the jihadist and terrorist threat in the northern regions of the country, restore territorial integrity, re-establish State authority over the northern regions, and protect persons and property, as well as ensure their return, to those regions. Colonel (now General) Abdoulaye Coulibaly was the commander of *Operation Maliba* until August 2014, and his deputy was Colonel

[75] See case No. CEI37 below.

[76] "Azawad" is a term derived from the Tamashek word "azawa", which refers to a large wooden food dish made by Tuareg blacksmiths and, by analogy, to a large, flat plain (the fossil valley of the central Sahara) located to the north of the city of Timbuktu, in the present-day region of Taoudénit. Since the 1990s, the term has acquired a "d" and has taken on broader connotations relating to the political and territorial demands of the Tuareg rebels. In the present context, "Azawad" refers to an area encompassing the three or, since 2016, five regions in northern Mali (Kidal, Gao, Timbuktu, Ménaka and Taoudénit), and the northernmost part of the regions of Mopti and Ségou.

[77] The other units that took part in the battle for Konna included the Gao detachment, which was led by Lieutenant Colonel Kassoum Goïta, the Sikasso detachment, which was led by Mamadou Massaoulen Samake, and the artillery, which was led by Pascal Berthe. See testimony No. 532; Maliweb.net, Interview with Lieutenant Colonel Abass Dembélé, 15 January 2019.

[78] See case No. CEI33 below.

[79] However, the French armed forces asked the Malian Armed Forces not to enter Kidal.

Abderrahmane Baby.[80]

80. In 2014, measures were taken to rebuild and strengthen the Malian Armed Forces, which had become alarmingly weak following their rapid defeat by the armed groups in 2012, the coup d'état of March 2012 and the setback that they had encountered on 21 May 2014 in attempting to regain control of Kidal.[81] Two chains of command were established in that rebuilding effort. The first was the establishment of an organic chain of command, which included the Headquarters of the Army, the Air Force, the National Guard and the Gendarmerie, and was responsible for carrying out day-to-day activities. The second was an operational chain of command, comprising a strategic level (joint operational coordination centre), an operational level (command posts located in defence zones), and a tactical level (military and regimental command posts). Defence Headquarters was the permanent joint coordination body of the Armed Forces; in times of crisis, the joint coordination responsibility was shared with the National Guard and the Gendarmerie, both of which normally fall under the Ministry of Security.[82] The State of Mali provided financial support for the rebuilding effort, contributing CFAF 1.230 billion between 2015 and 2019 for the purchase of equipment, for salary increases and for the recruitment of 10,000 military personnel.[83] The rebuilding also included the implementation of the provisions of the Agreement on Peace and Reconciliation in Mali relating to security sector reform and to the disarmament, demobilization and reintegration of former combatants (the DDR process).[84] Although behind schedule, the implementation of the DDR process, which has been broadly supported by MINUSMA, remains ongoing.

81. As part of the restructuring of the Army, and at the request of the Government of Mali, a joint military training programme between the Malian Armed Forces and the European Union was established in 2013. That programme, known as the European Union Training Mission in Mali (EUTM), is still in effect and will conclude its fourth mandate in 2020. The Mission's stated objective is to "assist the Malian Armed Forces in restoring their capacity with a view to enabling them to conduct military operations aimed at restoring territorial integrity and reducing the threat posed by terrorist groups". EUTM is designed to provide, for the Malian Armed Forces, training support; training and advice on command, control, supply chain and human resources; and training in the areas of international humanitarian law, civilian protection and human rights.[85] Approximately 14,000 members of the Malian Armed Forces have been trained under EUTM since its establishment. In particular, training

[80]Testimony No. 528; Presidential Decree No. 2013-628/P-RM of 29 July 2013, on the establishment of *Operation Maliba*, Official Gazette of the Republic of Mali, No. 37, 13 September 2013; Decree No. 2013-629/P-RM of 30 July 2013 on the appointment of the commanders of *Operation Maliba*.

[81]Denis M. Tull, Rebuilding Mali's army: the dissonant relationship between Mali and its international partners, International Affairs, 2019, pp. 411–412; Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, pp. 16, 45–46; Committee on National Defence and the Armed Forces, National Assembly information report on *Operation Serval* in Mali, No. 1288, 18 July 2013.

[82]For information on security and defence sector reform, see Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019; Le Républicain, La réforme de l'armée: la cartographie de l'organisation territoriale de la nouvelle armée, 21 February 2014. See also confidential document of EUTM and MINUSMA.

[83]Act No. 2015-008 of 5 March 2015, on military orientation and programming for 2015–2019. See also report of the Committee on Defence, Security and Civil Defence of the National Assembly on the draft law on military orientation and programming for 2015–2019, 23 February 2015.

[84]See, in particular, articles 17–20 of the Agreement on Peace and Reconciliation in Mali.

[85]See the EUTM website.

was provided for eight battalion-sized contingents, each comprising more than 600 personnel, known as joint tactical groups (GTIA), five of which participated in refresher courses.[86] Despite that training, members of a number of GTIAs committed violations or crimes that fell within the scope of the Commission's mandate.[87] The Commission also obtained particularly credible information concerning abuses (extortion, ill-treatment and extrajudicial executions) committed by members of the eighth GTIA, whose training ended in 2016, during operations conducted in Gourma in 2019.[88]

82. In January 2017, President Ibrahim Boubacar Keïta issued a decree establishing *Operation Dambè*, meaning "dignity", which covered the entire regions of Mopti, Timbuktu, Gao and Kidal, as well as the northern parts of the regions of Ségou and Koulikoro. The aim of the operation was to "curb terrorist activities, enable the redeployment of the Malian Armed Forces, restore the administration, ensure the return of displaced persons and restore normal socioeconomic life". The operation was led by the Chief of Defence Staff, who was assisted by the Deputy Chief of Defence Staff.[89] When *Operation Dambè* was established, the Chief of Defence Staff was General Didier Dacko. He held that position until 8 June 2017, when he was appointed Commander of the Joint Force of the Group of Five for the Sahel. He was replaced by Brigadier General M'bemba Moussa Keïta, who was assisted by General Abdoulaye Coulibaly. Coulibaly has himself since become Chief of Defence Staff after the dismissal in March 2019 of General M'bemba Moussa Keïta following violence against civilians in the village of Ogassagou (Bankass cercle, Mopti region).[90]

iii. Malian Air Force

83. The Air Force was officially established on 6 February 1976, although it originated at an earlier date.[91] It became an independent body within the Malian Armed Forces in October 1999. Although the Air Force has long received foreign cooperation in the form of equipment and personnel training, like the rest of the Armed Forces, it has gradually lost its operational capability owing to poor maintenance of equipment and training for personnel.[92] Only part of the air fleet, including at least two of the four

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[86] EUTM, Mali Factsheet.

[87] See, for example, case No. CEI43 and case No. CEI89.

[88] Testimony No. 383; Confidential court documents. Pursuant to its mandate, the Commission tried to determine the impact of the training on humanitarian law and human rights provided by EUTM by asking the Mission to provide the names of the past and current commanders of the eight GTIAs trained between 2013 and 2017. The official response received from EUTM was that there was no available document containing the names of the trainees. The lack of adequate and transparent records concerning the trainees, in particular their participation in training related to international humanitarian law and human rights, made it impossible to assess the progress of the Malian Armed Forces in those areas.

[89] Presidential Decree No. 2017-0001/P-RM of 5 January 2017, on the establishment of *Operation Dambè*, Official Gazette of the Republic of Mali No. 3, 19 January 2017.

[90] Brigadier General Souleymane Bamba was then appointed deputy to Abdoulaye Coulibaly. In March 2020, *Operation Dambè* was replaced by a harmonized concept of operations, which was to be implemented throughout the country over a five-year period using an offensive strategy.

[91] The origin of the Air Force is closely linked to the Tuareg rebellion of 1963, when it had a number of Soviet aircraft and had operating personnel trained in the Soviet Union.

[92] EUTM Mali, Newsletter, Une capacité aérienne moderne pour le Mali, September 2017; Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019, p. 11; Committee on National Defence and the Armed Forces, National Assembly information report on *Operation Serval* in Mali, No. 1288, 18 July 2013, p. 22. Until the coup d'état of 22 March 2012, the Chief of Defence Staff was

MI-24 helicopters, was operational in early 2012 and early 2013.[93] During the reorganization of the military in 2014, the Air Force was divided into two operational regions covering the northern and southern parts of the country.

iv. Malian National Guard

84. The responsibilities of the National Guard include protecting institutions and administrative and political authorities, providing general policing services for local authorities, controlling the borders, maintaining law and order, and ensuring the operational defence of the country. The National Guard is the most decentralized component of the Malian Armed Forces and theoretically operates at all local authority levels (regions, cercles and communes) and at border outposts and in insecure areas. The National Guard is under the authority of the Ministry of Defence and Veterans Affairs, but is available to the Ministry of Security and Civil Defence for operational matters. Its current structure was set forth in a presidential decree of June 2002. It has one national headquarters, 16 local headquarters and a coalition of groups (units). The National Guard comprises about 3,000 personnel. More former combatants from previous rebellions have been integrated into the National Guard than into any other component of the Malian military.[94]

v. National Gendarmerie

85. The National Gendarmerie is under the authority of the Ministry of Defence and Veterans Affairs, for administrative matters, and of the Ministry of Security and Civil Defence, for operational matters. It existed during the colonial period and under the short-lived Sudanese Republic. The Gendarmerie has undergone a number of reforms, including that of 1999, when its current structure, with its general directorate, was established. It is divided into nine units and performs defence, public safety, administrative, judicial and military police functions. The Gendarmerie and the National Police operate in different areas of the country: the Gendarmerie is responsible for rural areas and the Police for cities. The Gendarmerie theoretically operates throughout the country at the communal level, but, in reality, it has neither the resources nor the security capabilities to do so. Gendarmerie stations are generally found in the capitals of the cercles. The Gendarmerie serves as the local police force for most of the population. Owing to its presence in remote areas, the Gendarmerie remains a prime target for extremist armed groups.[95]

86. The Gendarmerie was responsible for investigating most of the violations, abuses and crimes documented by the Commission. The Commission observed on the ground the issues related to

General Mamadou Togola. He was replaced by Brigadier General Souleymane Bamba until March 2019. At the beginning of the 2012 crisis, approximately 1,000 persons worked for the Air Force.

[93] See cases Nos. CEI12 and CEI28 below.

[94] See Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, pp. 27, 67; Committee on National Defence and the Armed Forces, National Assembly information report on *Operation Serval* in Mali, No. 1288, 18 July 2013, p. 22. For a list of all National Guard commanders, in particular for the period 2012–2018, see Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019, p. 17.

[95] Le Républicain, La réforme de l'armée: la cartographie de l'organisation territoriale de la nouvelle armée, 21 February 2014, Le Clairon, La voix des forces armées et de sécurité du Mali, special edition of 20 January 2019; Centre FrancoPaix en résolution des conflits et missions de paix, Le processus de réforme du secteur de la sécurité au Mali, Niagalé Bagayoko, February 2018, pp. 27, 49, 59, 64-66.

resources, training and security faced by gendarmes in conducting investigations.[96] Like all other judicial bodies, the Gendarmerie is not immune to corruption. Although some progress has been made, problems remain with regard to the number of persons arrested in connection with the conflict and detained in gendarmerie camp No. 1 in Bamako, with regard to the length of time that they were detained without committal orders, and with regard to the detention conditions at the camp. However, the Commission notes that the gendarmes treated the detainees under their supervision with respect, and that it received few allegations of mistreatment by gendarmes. On the contrary, in almost all documented cases, persons arrested during military operations said that the ill-treatment stopped as soon as they were placed under the supervision of the gendarmes, and that the gendarmes arranged for them to receive medical care when necessary.

87. Gendarmes are deployed alongside military units during operations not only to arrest suspects but also, theoretically, to perform their military police functions. However, their presence is often minimal and is not always well understood by the military personnel involved. The investigations showed that military police deployed alongside the Malian Armed Forces during operations were rarely able to intervene or to perform their military police duties unhindered, and were sometimes threatened by the soldiers when trying to carry out their functions.[97]

2. National Police

88. The Malian National Police is under the responsibility of the Ministry of Security and Civil Defence. Pursuant to a decree of 20 October 2004, the National Police is led by a Director-General. The Directorate-General of the National Police comprises the Inspectorate General; six departmental directorates (including the Directorate for Public Security, which also manages specialized units, and the Directorate of Judicial Police); three related departments; and the regional directorates of police and local public security departments. The regional directorates (one per region) are responsible for leading, coordinating, monitoring and supervising the police departments within their purview. The responsibilities of the Police include protecting persons and property and maintaining law and order, safety and public peace. Accordingly, the regional directorates supervise and monitor security maintenance during public demonstrations. Regional directorates may request reinforcements from the National Gendarmerie and the National Guard if their personnel require assistance in managing public demonstrations.[98]

89. The National Police has played a secondary role in the crisis that has afflicted Mali since 2012, as it has a much greater presence in urban areas, which have been less affected by the violence than remote areas. However, the National Police has been involved in responding to attacks carried out by extremist armed groups in urban areas and in managing protests related to the conflict in Bamako and Gao, in particular.[99]

(B) Main armed groups

90. One of the distinguishing features of the crisis in Mali is the number of armed groups involved,

[96] See, for example, testimony No. 298.

[97] See, for example, testimony No. 383. Strictly confidential court documents.

[98] Decree No. 04/470/P-RM of 20 October 2004. See also website of the National Police of Mali; testimony No. 239;

[99] See cases Nos. CEI98 and CEI79.

as well as the transformation and proliferation of those groups as a result of political and security developments. The main groups relevant to the Commission's mandate can be divided into two categories. The first category consists of armed groups, most of which are organized, that have political and socioeconomic demands and have signed or support the implementation of the Agreement on Peace and Reconciliation in Mali. The second category consists of extremist armed groups that have not signed the Agreement and that seek to impose their interpretation of Islam in Mali. Individual factsheets setting out, to the extent possible, the main members and chains of command for each group, are included in Annex 3.

1. Main armed groups with political and socioeconomic demands

i. Mouvement National de Libération de l'Azawad (MNLA)

91. MNLA was established on 16 October 2011 and is still operational. It is the result of the merger of the Mouvement national de l'Azawad (MNA), a movement of students and community activists living in Mali or abroad from the regions of northern Mali, and fighters led by Ibrahim Ag Bahanga who continued to operate after the conclusion of the 2006 Algiers agreement.[100] At a time when MNA was gaining visibility,[101] the end of Muammar Gaddafi's regime in August 2011 led to the return to Mali of many Tuareg members of the Libyan army, with the encouragement of Ibrahim Ag Bahanga.[102] Those seasoned fighters returned heavily armed, and most of them took up base in Zakak, in the region of Kidal, under the leadership of Mohamed Ag Najem, a former Colonel in the Libyan army.[103] Discussions were held between the returnees from Libya and MNA in Zakak, leading to the creation of MNLA in October 2011.[104]

92. Upon its establishment, MNLA presented itself as "a political and military movement for all the people of Azawad," a movement which was fighting "for the right to self-determination of the people of Azawad" and which "rejected terrorism and extremism in all their forms".[105] In 2012, it had a separatist agenda and declared the independence of "Azawad", in Gao on 6 April.[106] At the beginning of 2013, when the balance of power changed, MNLA renounced secessionism and demanded autonomy and federalism for the regions in northern Mali during the peace talks.[107] The group signed the

[100] MNA, which was established on 1 November 2010, was a pacifist organization whose objective was to "restore all the historical rights that have been denied to the people of Azawad as a whole". See MNA founding declaration, 1 November 2010; testimonies Nos. 411 and 450.

[101] The rise of MNA was facilitated by the arrest of two of its members, Moussa Ag Acharatoumane and Bobacar Ag Fadil, and by the ensuing demonstrations of support, which gave the group internal cohesion and media visibility. Noria, Du MNA au MNLA, le passage à la lutte armée, 10 June 2014; testimonies Nos. 450, 378 and 471.

[102] In August 2011, Ibrahim Ag Bahanga died in a car accident, considered by some interlocutors to be suspicious. Testimonies Nos. 379; 378; 267. Les Carnets du Sahel, Nord-Mali: qui était Ibrahim Ag Bahanga?, September 2018.

[103] Another group of Tuareg fighters returning from Libya took up base in Takellote, 30 kilometres south of the city of Kidal. That group, which was composed mainly of Tuaregs from the Imghad tribe, was welcomed by the Malian authorities through General El Hadj Ag Gamou. The Government's objective was to provide them with living accommodations and to integrate them into the Armed Forces. At the end of 2011, as a result of the slow pace of the integration process, some of them joined MNLA in Zakak, while others followed General El Hadj Ag Gamou. Testimonies Nos. 379, 450 and 267.

[104] MNLA communiqué No. 1, 16 October 2011; testimonies Nos. 379 and 450.

[105] MNLA, press release: Une semaine dans l'Azawad, 27 January 2012.

[106] MNLA, declaration of independence of Azawad, 6 April 2012.

[107] MNLA, communiqué No. 52, MNLA statement, 13 February 2013.

Agreement on Peace and Reconciliation in Mali under the banner of the Coordination des mouvements de l'Azawad (CMA).[108]

93. Although MNLA aims to represent all the people of the regions of northern Mali, it is largely composed of Tuaregs from certain tribes, in particular the Idnane and the Ifoghas.[109] The military branch of MNLA is composed of fighters from the 1990 and 2006 rebellions, Tuareg fighters who returned from Libya, personnel who deserted the Malian Armed Forces, and new recruits. In 2012, the number of MNLA fighters was estimated at 7,000, a figure which declined to 3,000 in 2014 and was estimated at 2,000 in January 2018. That decline is attributed to the splintering of the movement into at least three new movements: the Coalition du peuple pour l'Azawad (CPA),[110] which was established in March 2014; the Mouvement pour le Salut de l'Azawad (MSA), [111] which was established in September 2016, and the Congrès pour la justice dans l'Azawad (CJA), which was established in October 2016.[112] The decline is also attributed to the defection of fighters to the Haut Conseil pour l'Unité de l'Azawad (HCUA), to the Groupe autodéfense touareg Imghad et alliés (GATIA), or to extremist armed groups.

94. Since its inception, MNLA has been led by Bilal Ag Acherif, who serves as its secretary-general. Its military branch is led by Mohamed Ag Najem. MNLA is governed by statutes with rules of internal discipline.[113] It comprises local militias based in the main localities in its area of influence, which are led by local leaders with military ranks recognized by the group.[114] MNLA has the capacity to plan, coordinate and conduct protracted military operations.[115] When MNLA declared the independence of "Azawad" on 6 April 2012, it controlled large areas in the three regions in the north of Mali (Kidal, Timbuktu and Gao (including Ménaka)) and in the northern parts of the regions of Mopti and Ségou. After its defeat by the extremist armed groups, MNLA lost that territory but regained control of Kidal and the surrounding areas in early 2013. MNLA has sources of funding which enable it to conduct military operations, pay its fighters and obtain equipment.[116]

ii. Haut Conseil pour l'Unité de l'Azawad (HCUA)

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[108]MNLA has been a member of CMA since its inception in June 2014. CMA was established gradually after the conclusion of the preliminary agreement to the presidential election and the inclusive peace talks in Mali, following the issuance of a declaration by the secretaries-general of MNLA, MAA and HCUA in Algiers. See Algiers declaration of the three secretaries-general, 9 June 2014. The CMA joint military force became operational on 28 October 2014. MNLA press release: la coordination militaire de l'Azawad est opérationnelle, 28 October 2014. See also CMA charter adopted in Kidal on 5 September 2017.

[109]Institut de Relations Internationales et Stratégiques (IRIS), Programme humanitaire et développement, Le contexte sécuritaire au Nord et Centre du Mali: Les jeux d'acteurs à l'horizon 2019, August 2018, p. 14.

[110]See Annex 3.

[111]See the section on MSA below and Annex 3.

[112]See Annex 3.

[113]MNLA, Defence and security council, military staff, organic text on the organization and regulation of the MNLA armed forces, undated (which contains, in addition to the organic framework and rules of discipline, internal regulations providing for respect for international humanitarian law). See also MNLA Action plan on respecting the laws of war, presented to the United Nations Security Council on 10 October 2012.

[114]MNLA has also developed a specialized counter-terrorism unit. Jeune Afrique, Nord du Mali: la guerre est déclarée entre le MNLA et Iyad Ag Ghali, 22 January 2016.

[115]See, for example, case No. CEI04; CEI44; CEI47; CEI52; CEI70.

[116]Annex 3. See also confidential MINUSMA document.

95. HCUA was established on 19 May 2013 and is still operational. The group was formed under the name Haut conseil de l'Azawad (HCA) on 2 May 2013 by influential Tuaregs led by Mohamed Ag Intalla, the eldest son of the *amenokal* (traditional chief) of the Ardrar des Ifoghas, Intalla Ag Attaher,[117]with the aim of uniting to participate in the peace negotiations. Mohamed Ag Intalla invited the other groups to join HCA. Intalla Ag Attaher, then a member of MNLA, joined HCA, together with other members of MNLA.[118] The Mouvement Islamique de l'Azawad (MIA), which was founded by Algabass Ag Intalla (brother of Mohamed Ag Intalla) in January 2013 following its split from Ansar Eddine, also accepted the invitation, dissolved and, on 19 May 2013, joined HCA. On the same day, HCA was renamed HCUA.[119] HCUA signed the Agreement on Peace and Reconciliation in Mali under the banner of CMA, of which it has been a member since its inception.

96. HCUA does not officially support independence and has stated that "to achieve stability and peace in the Sahel, the local populations of Azawad must autonomously manage all political, economic and security aspects of their life". The group adheres to a strict Islamic ideology.[120] It is predominantly composed of Tuaregs from the Ifoghas tribes, but also includes Tuaregs from other tribes and members of the Arab community.[121] The number of HCUA fighters was estimated at 600 in 2014 and at 400 in 2018.[122] HCUA is currently considered the most influential group in CMA, particularly in the region and city of Kidal.[123]

97. During the establishment of the institutions of HCUA, the *amenokal* of the Adrar des Ifoghas, Intalla Ag Attaher, was appointed President and his son, Mohamed Ag Intalla, was appointed Secretary-General.[124] After Mohamed Ag Intalla was elected to the National Assembly of Mali, Algabass Ag Intalla became Secretary-General in July 2014 and still holds that position. HCUA has a military chain of command that was headed by Cheick Ag Aoussa, the former military leader of Ansar Eddine, from 2012 until his death on 8 October 2016, when his vehicle exploded as he was leaving the premises of MINUSMA in Kidal. He was replaced by Achafghi Ag Bohada, who is still the leader.[125] HCUA comprises local militias based in the localities in its area of operation, which are led by local leaders with military ranks recognized by the group. HCUA operates in large areas in the regions of Gao (north of the city of Gao heading towards Kidal), Timbuktu (Koigouma in particular), Kidal and Ménaka. The

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[117]In 2014, Mohamed Ag Intalla became the new *amenokal* of the Adrar des Ifoghas following the death of his father. Testimony No. 413; RFI Africa, Mali: Mohamed ag Intalla succède à son père à Kidal, 27 December 2014.

[118]RFI-Afrique, Azawad: le chef coutumier de l'Adrar des Ifoghas quitte le MNLA et rejoint le HCA, 19 May 2013. Although MNLA did not join HCUA, it gave HCUA its support and the two groups agreed to speak with one voice during the peace talks in Burkina Faso. MNLA communiqué on clashes at Anefis and on HCUA, 21 May 2013; France 24, Le MNLA et le Haut conseil de l'Azawad s'unissent et veulent garder le contrôle de Kidal, 2 June 2013.

[119]Testimonies Nos. 413 and 379. RFI-Afrique, Mali: le Haut Conseil de l'Azawad met en place ses instances, 20 May 2013.

[120]Communiqué No. 001/HCUA/2016; Jeune Afrique, Mali: des touaregs créent un Haut Conseil de l'Azawad pour négocier avec Bamako, 6 May 2013; confidential report of DPKO and DPA, p. 20.

[121]Confidential report of DPKO and DPA, p. 20.

[122]See Annex 3.

[123]Testimony No. 432; IRIS, Programme humanitaire et développement, Le contexte sécuritaire au Nord et Centre du Mali: Les jeux d'acteurs à l'horizon 2019, August 2018, p. 15.

[124]RFI-Afrique, Mali: le Haut Conseil de l'Azawad met en place ses instances, 20 May 2013.

[125]RFI-Afrique, Mali: le HCUA a désigné son nouveau chef après l'assassinat de Cheikh Ag Aoussa, 26 October 2016.

Commission’s investigations showed that HCUA has the capacity to plan, coordinate and conduct military operations.[126]

98. Since its establishment, HCUA has claimed to be “against terrorism”.[127] However, because Algabass Ag Intalla and Cheick Ag Aoussa held key positions in Ansar Eddine in 2012 and because there are many defectors from Ansar Eddine among its members, HCUA has been accused of collusion and cooperation with Ansar Eddine and Jama’a Nusrat ul-Islam wa al-Muslimin (JNIM).[128] HCUA has denied these accusations.[129] The Commission considers that there is no evidence that there has ever been a hierarchical relationship between Ansar Eddine and/or JNIM and HCUA. However, there are reasonable grounds to believe that at least some members or associates of HCUA continue to collaborate and/or partner with Ansar Eddine and JNIM.[130] Furthermore, the Commission notes that, although the Security Council Committee established pursuant to resolution 2374 (2017) concerning Mali listed a number of members or associates of HCUA in 2018 and 2019 (including one for associating with extremist armed groups), HCUA has not distanced itself from or taken other any other action against those individuals.[131]

iii. Mouvement Arabe de l’Azawad (MAA) (MAA-CMA and MAA-Plateforme)

99. In late 2012, the Front de libération nationale de l’Azawad (FLNA), which had been established in Timbuktu in April 2012, became the Mouvement Arabe de l’Azawad (MAA). MAA sought to defend the interests of Arab populations in the north of Mali and portrayed itself as a secular organization. However, several influential figures, such as Yoro Ould Daha and Dina Ould Daya, and many Arab fighters who were associated with MUJAO, Ansar Eddine and JNIM in 2012 joined MAA following the military intervention that took place in early 2013.[132]

100. MAA was involved in several clashes with MNLA in 2013[133] before it split into two groups in September 2013. One group, headed by Sidi Brahim Ould Sidati and composed mainly of Kunta Arabs, became part of CMA (MAA-CMA). The other, made up of Lemhar and Bérabiche Arabs and led by Ahmed Ould Sidi Mohamed, joined the Plateforme (MAA-Plateforme). Former members of MUJAO thus joined MAA-Plateforme and found themselves on the pro-Government side. Moreover, by joining

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[126] The Commission is also of the view that HCUA has funding to enable it to carry out military operations, pay fighters and obtain weapons and other military equipment. See also confidential MINUSMA document.

[127] Jeune Afrique, Mali: des touaregs créent un Haut Conseil de l’Azawad pour négocier avec Bamako, 6 May 2013;

[128] See, for example, testimony No. 412; IRIS, Programme humanitaire et développement, Le contexte sécuritaire au Nord et Centre du Mali: Les jeux d’acteurs à l’horizon 2019, August 2018, p. 15; European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel.

[129] See, for example, Communiqué No. 001/HCUA/2016.

[130] See, for example: final report of the Panel of Experts established pursuant to resolution 2374 (2017) on Mali (S/2018/581), 9 August 2018, paras. 79, 143; final report of the Panel of Experts established pursuant to resolution 2374 (2017) on Mali and extended pursuant to resolution 2432 (2018) (S/2019/636), 7 August 2019, paras. 2, 95, 97-98, 149. See also testimonies Nos. 471 and 412; Strictly confidential document from witness No. 383.

[131] Mahmadou Ag Rhissa (MLi002) (trafficking in persons, organized crime and links to extremist armed groups); Ahmed Ag Albachar (MLi.004) (obstruction of the delivery of humanitarian aid).

[132] Confidential document of the Human Rights and Protection Division (HRPD) of MINUSMA; Confidential report of DPKO and DPA, p. 21; Testimony No. 450.

[133] See, for example, case No. CEI04; case No. CEI52; See also confidential document of MINUSMA.

CMA and the Plateforme, MAA became a signatory to the Peace and Reconciliation Agreement.[134] In 2012, MAA claimed to have 500 fighters. In 2014, MAA-CMA had approximately 600 fighters and MAA-Plateforme 1,200.[135] Both MAA branches are organized with local militias and have training camps. They both have the capacity to plan, coordinate, conduct[136] and finance[137] military operations.

101. Two members of MAA-Plateforme, Yoro Ould Daha (died 9 February 2020), a former member of the MUJAO Islamic police in Gao who went on to become one of the leaders of the Operational Coordination Mechanism (MOC) in Gao, and Mohamed Ould Mataly, a member of parliament, were listed by the United Nations for obstructing the implementation of the Peace and Reconciliation Agreement, in part through their links to extremist armed groups.[138] MAA-Plateforme has not distanced itself from or punished them.

iv. Local self-defence movements (Ganda Koy, Ganda Izo, FLN)

102. The three main local self-defence movements are Ganda Koy, Ganda Izo and the Front de libération des régions du Nord (FLN), composed mostly of Fulani civilians and Songhai, but also of Bella Tuaregs, Dogons and Bozos from the northern regions of Mali. In 2012 and 2013, their aim was to protect local populations and help the defence and security forces regain control of the northern regions of Mali. All of these movements have their roots in the Mouvement patriotique Ganda Koy ("masters of the land"), a self-defence militia established in 1994 by members of the Malian Armed Forces to combat the rebellion. It was officially disbanded in 1996, but re-emerged as a result of the 2012 crisis.[139] Sometime after 2006, former members of Ganda Koy established a new but similar dissident movement named Ganda Izo, which means "children of the land". Amadou Diallo was its military leader until he was killed in an ambush in Tin-Hama on 25 March 2012.[140] In 2012, FLN was established in Sévaré on the initiative of former members of the Armed Forces.[141]

103. In July 2012, the local self-defence movements came together to participate in the peace talks as the Coordination des mouvements et Front patriotique de résistance (CMFPR).[142] CMFPR split into CMFPR-1 and CMFPR-2 in early 2014, owing to personality clashes. CMFPR-1 signed the Peace and

[134] The two branches of MAA clashed several times in 2014. See confidential document of MINUSMAs; Confidential document of HRPD, MINUSMA; Beatriz Mesa, Le rôle transformateur des groupes armés du nord du Mali : de l'insurrection djihadiste et sécessionniste au crime organisé (1996–2017), pp. 35–36; European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel.

[135] In recent years, MAA has maintained a presence on the ground by using funds from the significant financial resources of its two branches to pay small bands of fighters from other groups to fulfil its objectives. Confidential document of HRPD, MINUSMA; Confidential document of MINUSMA.

[136] The military leader of MAA-CMA is Houssein Ould Ghoulam, a.k.a. "Grand Quelqu'un" (who deserted the National Guard). The commander of the MAA-Plateforme forces is Abderahmane Ould Meydou.

[137] See annex 3 and confidential document of MINUSMA.

[138] See Consolidated United Nations Security Council Sanctions List, MLi.006 and MLi.008.

[139] Testimonies Nos. 386, 391, 267/455 and 282. See also L'Essor-Bamako, Mali. Plongée dans la milice d'autodéfense Ganda Koy, 2 August 2012; Internal document of MINUSMA; Beatriz Mesa, Le rôle transformateur des groupes armés du nord du Mali : de l'insurrection djihadiste et sécessionniste au crime organisé (1996–2017), 2017.

[140] Internal document of MINUSMA; Testimonies Nos. 400, 386, 391, 314 and 520.

[141] Testimony No. 386; L'Essor, Mali : Dans le camp des volontaires, 6 August 2012.

[142] Beatriz Mesa, Le rôle transformateur des groupes armés du nord du Mali : de l'insurrection djihadiste et sécessionniste au crime organisé (1996–2017), 2017; Testimony No. 297.

Reconciliation Agreement as part of the Plateforme. CMFPR-2 signed under CMA, even though the two had serious ideological differences and CMFPR-2 was excluded from the leadership of CMA.[143]

104. In early 2012, Ganda Koy, Ganda Izo and, to a lesser extent, FLN, provided information for, and guided or participated in operations with or on behalf of the Malian Armed Forces. They retreated to Sévaré in April 2012 but continued to receive logistical support and training from the Malian Armed Forces.[144] Ganda Koy and Ganda Izo had established bases in Ansongo, region of Gao, and in the region of Timbuktu, and conducted patrols there until they retreated in April 2012.[145] After their retreat, Ganda Koy, Ganda Izo and FLN each established a base in Sévaré, housing an estimated 1,800, 1,300 and 850 fighters, respectively.[146] They were organized in small groups, which had limited command and control capability. They had few material resources or experienced fighters, but had a chain of command and a system of organization. For example, Ganda Izo fighters had membership cards and were given military uniforms and weapons upon recruitment.[147] Some of the fighters returned to Gao and Timbuktu in 2013; a number of them participated in the clashes with CMA groups in 2014 and 2015, under the banner of CMFPR-1. CMFPR-1 and CMFPR-2 fighters have largely remained at their stations since the Peace and Reconciliation Agreement was signed.[148]

v. Groupe d'autodéfense touareg Imghad et alliés (GATIA)

105. GATIA was established on 14 August 2014 in Tabankort (Gao region) and is still operating.[149] The group was formed after the Malian Armed Forces were defeated and retreated to Kidal in May 2014.[150] The group's public face is its Secretary-General, Fahad Ag Almahmoud,[151] but it was actually founded by General El Hadj Ag Gamou,[152] a Tuareg from the Imghad tribe who joined the Malian

[143] CMFPR did not split along the lines of the movements that had formed it, meaning that, for example, both CMFPR-1 and CMFPR-2 included former members of Ganda Koy and former members of Ganda Izo. CMFPR-2 is headed by Ibrahim Abba Kantao, former President of Ganda Izo, and its military leader is Ibrahim Diallo. Until 2019, CMFPR-1 was led by Harouna Touré, from Ganda Koy, as National Coordinator. Djibril Diallo is the military commander of CMFPR-1. Confidential document of MINUSMAs; testimonies Nos. 391, 294 and 297. Local self-defence movements have mushroomed since 2012, owing to personal conflicts within groups and the desire to be taken into consideration in the mechanisms set up for the implementation of the Peace and Reconciliation Agreement, in particular the DDR process. Delays in the implementation of DDR measures have fostered the proliferation of these movements and the artificial swelling of their ranks. See testimony No. 297.

[144] Despite a request for assistance from the Malian Armed Forces in January 2013, local armed groups did not participate in the recapture of the locality of Konna. Confidential document of HRPD, MINUSMA; Testimonies Nos. 240, 386, 391, 267, 294 and 297.

[145] Testimonies Nos. 391 and 314. Until July 2012, Ganda Izo also had an outpost in Douentza, in the Mopti region.

[146] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, A/HRC/22/33, 7 January 2012; Jeune Afrique, Mali : aux armes les citoyens, 8 August 2012.

[147] Testimony No. 240.

[148] Internal document of MINUSMA; Testimonies Nos. 240, 400, 386 and 455.

[149] AFP, Un nouveau groupe armé créé par des Touareg dans le nord du Mali, 14 August 2014; Confidential document of MINUSMA.

[150] See case No. CEI44.

[151] When GATIA was established, its bureau comprised 29 members, including Secretary-General Fahad Ag Almahmoud. Internal document of MINUSMA; GATIA document dated 4 August 2014, entitled "Bureau Politique du GATIA".

[152] Testimony No. 383; IRIS, Programme humanitaire et développement, le contexte sécuritaire au Nord et Centre du Mali : les enjeux d'acteurs à l'horizon 2019, August 2018, pp. 13–14; Confidential document of MINUSMAs.

Armed Forces in 1996 after participating in the rebellion.[153] In 2006 he was head of the Delta Force,[154] which was involved in countering the Tuareg rebellion. GATIA was born of the Delta Force. Many of the interlocutors were absolutely certain that, until recently, El Hadj Ag Gamou had been the military commander of GATIA and that the Government, with a view to influencing negotiations and having operations conducted in areas that were not accessible to the Malian Armed Forces, had been backing him.[155] GATIA is a signatory to the Peace and Reconciliation Agreement as a member of the Plateforme. The Plateforme was established on 14 June 2014, but GATIA did not join until later.[156]

106. The Secretary-General of GATIA portrayed the group as a self-defence group established "to defend the interests of our community [the Imghad and their allies] in the north of Mali, in particular against MNLA". The group recognized the territorial integrity of Mali, sought to work with the Government to bring about stability and did not demand autonomy for the northern regions of Mali.[157] GATIA was estimated to have 600 fighters in 2014 and 1,200 in January 2018. The majority of its members were Tuaregs from the Imghad tribe, who were historically the vassals of the noble Ifoghas tribe, which was strongly represented in MNLA and HCUA.[158] Some of its fighters were followers of El Hadj Ag Gamou, since the 1990 rebellion, others were civilian volunteers trained by officers of the Malian Armed Forces who had joined the Delta Force, and still others were Tuareg fighters who had arrived from Libya in 2011.[159]

107. The group quickly became a major player in the crisis, acting as a de facto proxy for the Malian Army. GATIA thus fought on several occasions as an advance force of the Malian Armed Forces, helping them regain control of certain areas. GATIA fought CMA armed groups on numerous occasions between 2015 and 2017. In 2017 and 2018, GATIA, alongside the Mouvement pour le salut de l'Azawad des Daoussak (MSA-D), conducted operations against JNIM and Islamic State in the Greater Sahara (ISGS) in Liptako, on the border between Mali, Burkina Faso and Niger, in cooperation with *Operation Barkhane* forces and the Malian Armed Forces.[160] The Commission's investigations revealed

[153]In the 1990s, El Hadj Ag Gamou fought in Armée révolutionnaire de libération de l'Azawad (ARLA). In 1993 and 1994, conflict broke out among the rebels and brought ARLA, whose members were mainly Imghad Tuaregs, into opposition with Mouvement populaire de l'Azawad (MPA), which had been established by Iyad Ag Ghali in 1988 and comprised primarily Tuaregs from the Ifoghas tribe. Furthermore, El Hadj Ag Gamou's first wife went on to marry Iyad Ag Ghali, and there is a rivalry between the two men that is rooted in their personal ambitions for power in the Tuareg community. Understanding the long-standing rivalry between these individuals and between the Ifoghas and Imghad Tuareg tribes is key to comprehending the dynamics of the crisis in Mali since 2012.

[154]The Delta Force was a militia formed by El Hadj Ag Gamou in 2009 to combat the Tuareg rebellion led by Ibrahim Ag Bahanga. See for example Jeune Afrique, Mali : Gamou, la revanche dans la peau, 4 March 2013.

[155]Testimonies Nos. 383 and 385; IRIS, Programme humanitaire et développement, le contexte sécuritaire au Nord et Centre du Mali : les enjeux d'acteurs à l'horizon 2019, August 2018, pp. 13–14. Jeune Afrique, Mali : le vrai-faux coming out du général Gamou, 23 September 2016; RFI, Mali : silence des autorités face aux accusations des Etats Unis sur le GATIA, 29 September 2016; Jeune Afrique, Mali : à quoi joue le général Gamou, 18 October 2016.

[156]See for example testimony No. 379.

[157]AFP, Un nouveau groupe armé créé par des Touareg dans le nord du Mali, 14 August 2014.

[158]The group also included Tuaregs from the Chérifan community and people of Arab, Fulai and Songhai origin. See testimonies Nos. 413 and 414; Aube, Fahad Ag Almahmoud, Secrétaire Général du Gatia à l'Aube : "l'Azawad n'est pas une entité politique", 22 January 2015.

[159]Testimony No. 267.

[160]Geneva Academy, The War Report, Armed Conflicts in 2018, April 2019, p. 58; IHL Resource Desk For Mali, legal brief, "Legal classification of the situation in Mali and applicable international law", October 2019, pp. 11–12; strictly confidential document of witness No. 383. See also, for example, RFI, Mali: Barkhane mène des opérations anti-terroristes dans la région de Gao, 23 February 2018; L'express, 30

that members of the Malian Armed Forces belonged to GATIA and/or participated occasionally in its military operations.[161] GATIA is militarily organized and structured around local militias located in the regions of Gao and Ménaka and in Gourma, in the Timbuktu region. The group has the capacity to plan, coordinate and conduct protracted military operations.[162] It also has sources of funding to enable it to carry out its operations.[163]

vi. Mouvement pour le salut de l'Azawad (MSA)

108. MSA was established on 2 September 2016 and is still operating.[164] It was formed after a number of influential members of CMA groups left those groups, claiming that the Ifoghas tribe had a monopoly on power within CMA, particularly in MNLA, and that other Tuareg tribes were not properly represented.[165] MSA was founded by Moussa Ag Acharatoumane, a former MNLA spokesperson and a member of the Daoussak Tuareg community, and Assalat Ag Habi, a former Colonel who deserted the Malian Armed Forces and belongs to a Taureg Chamanamas tribe. Disagreements between the Chamanamas and Daoussak tribes arose shortly after the establishment of MSA, resulting in the formation of two new groups: MSA-Chamanamas (MSA-C) and MSA-Daoussak (MSA-D). MSA-C was principally composed of Tuaregs from the Chamanamas tribes and operated north of the city of Gao, while MSA-D comprised mainly Tuaregs from the Daoussak tribe and was active in the Ménaka region.

109. MSA-D quickly established close relations with GATIA, with which it carried out joint patrols, and then with the Malian Armed Forces and the French forces, with which it conducted operations to counter Islamic State in the Greater Sahara in the Méneka region in 2017 and, to a greater extent, in 2018.[166] MSA-D has the capacity to plan, coordinate, conduct and finance military operations. Moussa Ag Acharatoumane is Secretary-General of MSA-D, and Ismail Ag Arahmat is its military commander.

vii. Self-defence groups in the regions of Ségou and Mopti

jihadistes tués dimanche par les forces françaises et maliennes, 5 April 2018; Libération, 'Moussa', l'arme de Paris au Sahel, 13 April 2018; Mapping armed groups in Mali and the Sahel website.

[161] Testimonies Nos. 383, 390 and 385; See also: Jeune Afrique, Mali : le Gatia, drôle de milice, 4 March 2015.

[162] See, for example, case No. CEI53; case No. CEI70; See also testimony No. 379; IRIS, Programme humanitaire et développement, le contexte sécuritaire au Nord et Centre du Mali : les enjeux d'acteurs à l'horizon 2019, August 2018, pp. 13–14.

[163] See annex 3.

[164] MSA, general resolution of the meeting held in Tin-Fadimata from 30 August to 1 September 2016; MSA, political declaration of the meeting held in Tin-Fadimata from 30 August to 1 September 2016.

[165] Jeune Afrique, Mali – Moussa Ag Acharatoumane : "Nous avons créé le MSA pour représenter tous les Azawadiens", 8 September 2016. The founders of MSA also disapproved of the clashes between CMA and GATIA, which continued in spite of the signing of the Peace and Reconciliation Agreement.

[166] That conflict led to violence against Fulani communities in the area. RFI, Mali: deux groupes armés s'allient pour prêter main-forte aux autorités à Ménaka, 9 April 2017; Confidential report of DPKO and DPA; Testimony No. 314; MSA-D joined the Plateforme in 2019; RFI, Mali : le MSA intègre la Plateforme des mouvements armés du Nord, 14 July 2019. However, some MSA-D members had left to rejoin HCUA in late 2017. See the final report of the Panel of Experts established pursuant to resolution 2374 (2017) on Mali (S/2018/581), 9 August 2018, para. 67. MSA-C maintained a more neutral stance towards CMA and formed an alliance with other minority-based groups. Alla Ag El-Mehdi is Secretary-General of MSA-C, and Colonel Assalat Ag Habi is its military commander.

110. With the escalation of the crisis in the Ségou and Mopti regions in 2015, many self-defence groups were established along community lines, in particular in the Dogon, Bambara and Fulani communities. Several witnesses attributed the re-emergence of those groups to the lack of State presence and the perception that the defence and security forces were not able to protect civilians and their property.[167] The level of organization and the capacity to conduct operations varies considerably between groups. Some comprise a few dozen fighters and operate only in a particular village or commune, while others coordinate with other groups. It is difficult to map these groups precisely, as some are very small, and because they emerge and disappear depending on the local security situation.

111. The most organized Dogon group is Dan Na Ambassagou, whose name means "hunters who trust in God". It is made up almost entirely of members of the Dogon community belonging to the brotherhood of traditional hunters (*dozos*).[168] Dan Na Ambassagou was formed in 2012 but did not take its current form until late 2016, when it took on the task of defending civilian populations from extremist armed groups that were stealing goods and livestock and carrying out targeted executions.[169]

112. Dan Na Ambassagou comprises a political arm, a military arm and a community arm. David Tembiné was the group's National Coordinator until July 2018, and Youssouf Toloba is its military leader.[170] Members have combatant identification cards signed by the military leader.[171] According to several of its members, Dan Na Ambassagou has several thousand fighters in some 30 camps, which are located in Bandiagara cercle, Bankass cercle, Koro cercle, part of Djenné cercle and part of Douentza cercle, in the region of Mopti, and in Tominian cercle, in the region of Ségou.[172] Dan Na Ambassagou coordinates the activities of local militias based in those areas.[173] It also carries out security tasks that are in principle reserved for the State: defending villages, setting up checkpoints, conducting patrols and confronting extremist armed groups or Fulani self-defence groups.

113. According to a report by the International Federation for Human Rights (FIDH) and the Malian Association for Human Rights (AMDH), Dan Na Ambassagou enjoys freedom of movement, at the very least. The Commission's investigations support that finding. This suggest that some members of

[167] Testimonies Nos. 207, 219, 267, 434 and 278; interview with source No. 88. See also ICG, Mali central : la fabrique d'une insurrection ?, 6 July 2016; Africa Report No. 238, pp. 20–21; HRW, "We used to be brothers", self-defence group abuses in Central Mali, 7 December 2018.

[168] Testimony No. 278.

[169] That shift took place following the execution of Théodore Somboro, a renowned traditional hunter *(dozo)* from Bankass cercle, in the Mopti region on 13 October 2016. Interview with source No. 88; Testimony No. 278. See also Bamada.net, Mouvement 'Dana Ambassagou' ou chasseurs se confiant à Dieu au pays Dogon : Vers l'autodéfense des populations et des valeurs sociétales », 24 August 2017.

[170] Testimony No. 278. See the Facebook page of Dan Na Ambassagou; Bamada.net, Mouvement 'Dana Ambassagou' ou chasseurs se confiant à Dieu au pays Dogon : Vers l'autodéfense des populations et des valeurs sociétales », 24 August 2017. Dan Na Ambassagou was able to conduct negotiations and arrange ceasefires with the Government of Mali and other armed groups. It was also able to speak with a single voice through its spokesperson, Marcelin Guengere, and had a public communications system in place. The group split in July 2018, when David Tembiné signed a unilateral non-aggression pact with Fulani armed groups. Youssouf Toloba decided to recognize a new political head of the group, and Captain Mamadou Goudienkilé was accordingly appointed Head of National Coordination. Tensions and incidents involving the two branches of Dan Na Ambassagou have been on the increase since then. See Le Point Afrique, Mali - Youssouf Toloba : "Notre mouvement cible les malfaiteurs, pas une ethnie", 12 December 2018.

[171] Testimony No. 235; HRW, "We used to be brothers", self-defence group abuses in Central Mali, 7 December 2018, pp. 27–28.

[172] Testimony No. 278; Le Point Afrique, Mali - Youssouf Toloba: "Notre mouvement cible les malfaiteurs, pas une ethnie", 12 December 2018.

[173] European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel. See also testimony No. 235.

the Malian Army have a favourable or laissez-faire attitude towards Dan Na Ambassagou and that members of the group may at times have acted as scouts or guides for Malian Armed Forces patrols, at least until 2018.[174] Dan Na Ambassagou was blamed for attacks on the Fulani villages of Koulogon and Ogossagou in 2019, although it denied responsibility, and the Government subsequently announced that the group would be dissolved and began officially disarming the group[175] This has been difficult to implement in practice, owing to the group's popularity with local civilian populations.

114. Dan Na Ambassagou does not run all the Dogon self-defence militias in the Mopti region. There are many other Dogon self-defence groups operating at the village or commune level, most of which were established by village chiefs or residents themselves in order to address the lack of safety. This is the case in the commune of Mondoro, in Douentza cercle, for example.[176]

115. In 2016, traditional hunters (*dozos)*, most of whom hail from the Bambara community, started forming self-defence groups, in particular in Djenné and Ténenkou cercles in the region of Mopti and Macina cercle in the region of Ségou, in order to protect people and their property at the village and commune levels. These Bambara *dozos* are usually armed with single-shot shotguns, but some now also have automatic weapons. The groups were formed between 2016 and 2017. They are funded by the local population and run by traditional hunters of the village or the commune; they each have their headquarters and provide assistance to one another. The defence and security forces have apparently used some of these Bambara self-defence groups as beacons or for assistance in reaching areas that are difficult to access.[177]

116. Fulani self-defence groups are harder to identify, as there are a large number of them, some are very tiny, and there is no coordination among them. It is extremely difficult to map these groups on the ground. Most of their members are from the Fulani community, and they have been formed by villages, to protect residents.[178] It is difficult to determine which of the groups collaborate with or receive assistance from extremist armed groups, and which refuse to collaborate.[179]

[174]FIDH and AMDH, Central Mali: Populations caught between terrorism and anti-terrorism, November 2018; Testimony No. 315. The Commission notes that the Malian Armed Forces have relied on *dozos* to maintain security in remote areas, provide information and serve as guides for Armed Forces patrols for many years, so it is easy to see how the support of the Armed Forces for Dan Na Ambassagou and Bambara traditional hunters' groups continued for so long. See testimony No. 301 for more information on this. Relations between Dan Na Ambassagou and the Malian Armed Forces have deteriorated since the Government ordered the Armed Forces to disarm Dan Na Ambassagou in 2018. See testimony No. 251; Le Point Afrique, Mali - Youssouf Toloba: "Notre mouvement cible les malfaiteurs, pas une ethnie", 12 December 2018.

[175]Testimony No. 315.

[176]See testimonies Nos. 234 et 207. See also HRW, "We used to be brothers", self-defence group abuses in Central Mali, 7 December 2018, p. 28–29.

[177]Testimonies Nos. 300, 299, 302, 277 and 313.

[178]See, for example, testimony No. 315.

[179]In May 2018, after the period that the Commission was mandated to cover in its investigations had come to an end, the Alliance pour le salut du Sahel, which claimed to have no affiliation with extremist armed groups or any other forces on the ground, was established in an attempt to organize the self-defence groups from Fulani villages in Mali and Burkina Faso. However, according to Human Rights Watch, the Alliance did not succeed in recruiting or uniting the self-defence groups that were already in place in Fulani villages.

2. Main extremist armed groups

117. A fundamental difference between this crisis and earlier rebellions is the role played by extremist armed groups. In 2012 and 2013, three extremist armed groups were operating in Mali under the banner of Al-Qaida: AQIM, Ansar Eddine and MUJAO. A failed invasion of southern Mali by the three groups in January 2013 resulted in heavy losses and defections. Since then, they have reorganized, either in their original forms or in mergers with other organizations. The number of attacks perpetrated by them increased from 2015, in particular in central Mali (the region of Mopti, the northern parts of the regions of Ségou and Koulikoro and the southern parts of the regions of Timbuktu and Gao). Al Mourabitoun largely replaced MUJAO and Ansar Eddine, with its katibas[180] in Macina and Gourma, establishing itself firmly in central Mali. All these groups loyal to Al-Qaida united under the banner of JNIM in March 2017. JNIM also supports the Ansar al-Islam group from Burkina Faso, which sometimes carries out operations in Malian territory.[181] In 2015, former members of MUJAO and, later, Al Mourabitoun began to leave the Al-Qaida umbrella in order to pledge allegiance to ISIL. They now operate in Burkina Faso, Mali and Niger under the name "Islamic State in the Greater Sahara". Islamic State in the Greater Sahara was not very active during the period covered by the Commission's investigations but has been rapidly increasing in power since 2018.

i. Ansar Eddine ("defenders of the faith")

118. Ansar Eddine, which in Arabic means "defenders of the faith," was established in December 2011 and is still operational. The group did not sign the Agreement on Peace and Reconciliation in Mali. Since 20 March 2013, it has been listed by the United Nations as being associated with Al-Qaida.[182]

119. In the 1990s, Iyad Ag Ghaly was a leader of one of the rebel movements. At that time, he was perceived as moderate and participated in the peace process.[183] At the end of the 1990s, he was consul of Mali in Saudi Arabia and became drawn to religious extremism. He returned to Mali in 2010 and served as a negotiator for the release of hostages held by AQIM. After the negotiations held in Zakak, which led to the formation of MNLA in October 2011, and after failing to assume leadership of that group, Iyad Ag Ghaly established Ansar Eddine and associated himself with AQIM in December 2011.[184]

120. Ansar Eddine is a movement whose followers initially consisted predominantly of Tuaregs from the Ifoghas clan and related tribes.[185] The group seeks to impose its interpretation of Islamic law in

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[180] The term "katiba" has been in use since the Algerian war (1954-1962). It referred to the smallest subdivision, comprising up to 100 fighters, of the National Liberation Army, the armed wing of the National Liberation Front. The term has been taken up by extremist armed groups operating in the Sahel to mean a fighting unit, equivalent to a battalion or company.

[181] See the document on Ansar al- Islam in annex 3.

[182] Notice on Ansar Eddine on the INTERPOL website (QDe.135).

[183] See section on GATIA below. Le Monde, Iyad Ag-Ghali, l'ennemi numéro un de la France, 28 July 2018.

[184] Testimonies Nos. 379 and 450; ICC, ICC-01/12-01-18, *The Prosecutor v. Al Hassan*, Corrigendum to the decision confirming the charges brought against Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 13 November 2019 (public redacted version) (ICC, Decision confirming the charges against Al Hassan of 13 November 2019), para. 71; Le Monde, Iyad Ag-Ghali, l'ennemi numéro un de la France, 28 July 2018.

[185] In particular the Tuareg tribes of Kel Affella, Ifergoumessen, Kel Ireyakkan and Kel Taghlit. See also confidential document of MINUSMA.

northern Mali with the long-term goal of establishing a caliphate in West Africa. The religious demands of Ansar Eddine only became known in March 2012, when the group publicly disassociated itself from the separatist demands of MNLA.[186] The number of members of Ansar Eddine was estimated at 300 at the beginning of 2012, but it increased rapidly to 1,000 and then to 3,000 during the course of the year.[187] The military intervention of January 2013 largely decimated Ansar Eddine's troops, some of whom also defected with Algabass Ag Intalla to establish the Mouvement Islamique de l'Azawad (MIA) (later the Haut Conseil pour l'Unité de l'Azawad (HCUA)) in order to participate in the peace negotiations.[188]

121. Iyad Ag Ghaly has been the highest-ranking commander of Ansar Eddine since its establishment. One of Iyad Ag Ghaly's main subordinate commanders and right-hand men is Mbam Ag Moussa, alias Bamoussa, a commander who deserted the Malian Armed Forces.[189] Ansar Eddine is organized into five katibas (fighting units): Tawhid (Kidal), Ansar Al-Sharia (Timbuktu), Macina (Mopti), Khaled Ibn Walid (border with Côte d'Ivoire) and Gourma or AAA (Gourma). The katibas have operational control in their respective areas but report to Ansar Eddine. Ansar Eddine has the capacity to carry out complex attacks such as armed ambushes, attacks using improvised explosive devices, rocket and mortar attacks and suicide attacks using explosive vehicles directed primarily at Government forces, MINUSMA and the French forces.

122. In 2012, Ansar Eddine operated in and could exert control over large areas of the regions of Kidal, Timbuktu and Gao. Between January and the end of March 2012, Ansar Eddine, together with AQIM, MNLA and MUJAO, participated in attacks against the bases of the Malian Armed Forces in the regions of northern Mali, including Ménaka, Aguelhok and Tessalit. The city of Timbuktu came under the control of the Ansar Eddine/AQIM alliance on 1 or 2 April 2012 and remained so until 28 January 2013. Throughout that period, Ansar Eddine and AQIM established bodies to manage all aspects of the city's operations (security, police, justice, religion, education). Those bodies were led by Iyad Ag Ghaly and Abou Zeid of AQIM, who was considered the governor of Timbuktu.[190] Between 30 March 2012 and March 2013, Ansar Eddine also controlled the city of Kidal and a number of localities in the area. Ansar Eddine, AQIM and MUJAO supported each other and operated in a coordinated manner. MNLA and Ansar Eddine were allies at the beginning of the crisis. Despite mounting tensions, that alliance continued until the end of May 2012, when it dissolved for good. Ansar Eddine, AQIM and MUJAO gradually ousted MNLA from most of the conquered areas.[191]

[186] See, for example, Atlas Info, Mali, un mouvement terroriste appelle à appliquer la charia par les armes, 18 March 2012.

[187] Ansar Eddine still had an estimated 800 members in 2014.

[188] See section on HCUA above; Testimonies Nos. 413 and 379; RFI-Afrique, Mali: le Haut Conseil de l'Azawad met en place ses instances, 20 May 2013.

[189] Another important member of Ansar Eddine in the city of Timbuktu in 2012 was Mohamed Moussa Ag Muhamed, who was arrested in 2013 in Algeria and handed over to the Malian authorities. Haroune Ag Saïd, alias Abou Jemal (killed in 2014), was also an important commander of Ansar Eddine. Ibrahim Ag Inawalen, alias Ibrahim Dina, who was reportedly killed in 2015, was the military leader of the Aguelhok area in 2012. Two other Ansar Eddine leaders in 2012, Alghabass Ag Intalla and Cheickh Ag Aoussa, joined HCUA in 2013. See Annex 3. See also ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 213.

[190] See, for example, ICC, Decision confirming the charges against Al Hassan of 13 November 2019, paras. 70, 74, 75, 77–84, 212, 216; Alpha Alhadi Koina, Les mouvements terroristes et leurs sources de financement au Sahel, pp. 37–44.

[191] ICC, Decision confirming the charges against Al Hassan of 13 November 2019, paras. 211, 218.

123. In January 2013, the Malian Armed Forces and the French armed forces stopped AQIM, Ansar Eddine and MUJAO from attempting to launch coordinated offensives against southern Mali in Konna, in the north of Mopti (Mopti region), and in Diabali (Ségou region). Ansar Eddine suffered heavy losses as a result, and the cities of Gao, Timbuktu and Kidal were recaptured at the end of January 2013. Fighting continued in the Adrar des Ifoghas until May 2013. Since then, the group has reorganized and continues to operate in the region of Kidal and on the Algerian border, in the Adrar des Ifoghas mountain range.[192] Since 2015, Ansar Eddine has also been extending its area of operation in the central part of Mali through its Macina and Gourma katibas.[193]

ii. Organization of Al-Qaida in the Islamic Maghreb (AQIM)

124. AQIM was established on 25 January 2007 and is still operational. It is an armed group of Algerian origin, although it has become internationalized and now operates throughout the Sahel region.[194] It did not sign the Agreement on Peace and Reconciliation in Mali and, since 6 October 2011, has been listed by the United Nations as being associated with Al-Qaida.[195]

125. AQIM seeks to impose its interpretation of Islam in North Africa and the Sahel. From the founding of AQIM in 2007 until his death on 3 June 2020, Abdelmalek Droukdel led the 14-member council of notables responsible for managing the group. In the Sahel, AQIM is controlled by a leader with the title "emir of the Sahara" who, from October 2012 until his death in February 2019, was Djamel Okacha, alias Yahia Abou Al Hamann.[196] A number of well-organized AQIM *katibas* have operated in Mali. For example, in 2012, under the leadership of the Algerian Abdelhamid Abou Zeid (died February 2013), the Tarek Ibn Zeyad katiba controlled the city of Timbuktu with Ansar Eddine. The Al-Furqan katiba began operating in Mali in 2012, under the leadership of the Algerian Djamel Okacha, alias Yahia Abou Al Hamann; since 2013, it has been led by Abderrahmane Talha, alias Abou Talha al-Mauritani.[197] The Al-Furqan katiba continued to operate after the recapture of the northern regions in 2013. In addition, Al Mourabitoun, whose leader Mokhtar Belmokhtar was expelled from AQIM in

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[192] IRIS, Programme humanitaire et développement, Le contexte sécuritaire au Nord et Centre du Mali: Les jeux d'acteurs à l'horizon 2019, August 2018, p. 17.

[193] IRIS, Programme humanitaire et développement, Le contexte sécuritaire au Nord et Centre du Mali: Les jeux d'acteurs à l'horizon 2019, August 2018, p. 17. For information on the Macina katiba, see the section on the group below. For information on the Gourma or AAA katiba, see Annex 3.

[194] AQIM is a splinter entity of the Armed Islamic Group, which was formed during the Algerian civil war of the 1990s. When AQIM pledged allegiance to Al-Qaida, it was known as the Salafist Group for Call and Combat. See testimony No. 450. Institut français des relations internationales (IFRI), Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 15. European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel. Notice on AQIM on the INTERPOL website.

[195] See Consolidated United Nations Security Council Sanctions List, QDe. 014. In Mali, the group seeks to establish an Islamic State by garnering the support of the local population.

[196] IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 15. European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel. See also testimony No. 468.

[197] See IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 16; Testimony No. 468; See also ICC, Decision confirming the charges against Al Hassan of 13 November 2019. At least two other AQIM katibas have operated in Mali: Al-Ansar, led by the Malian Tuareg Hamada Ag Hamada, alias Abdelkrim Al-Targui (died 2015), and Youssef Ibn Tachfin, led by the Malian Sedane Ag Hita, alias Abou Abdel Hakim Al-Kidali, and established in 2012.

October 2012, once again pledged its allegiance to the group in December 2015 and, once again, became one of its katibas.[198]

126. AQIM members are mainly from Algeria, Chad, Mali, Mauritania, Niger, Nigeria and Senegal. The organization has established a foothold at the local level by gaining people's trust, providing social and humanitarian aid, engaging in trade and entering into alliances and marriages. AQIM has been carrying out this strategy in Mali since 2003.[199] In 2012, its area of activity comprised the three regions in the north of Mali and, throughout that year, it controlled the city of Timbuktu and collaborated with the allied groups MUJAO and Ansar Eddine. In January 2013, AQIM took part in the offensive against the south, which resulted in the capture of Konna and Diabali, before being pushed back. Its area of activity has been considerably reduced since then. AQIM has the capacity to plan, coordinate and conduct protracted military operations.[200] The group carries out kidnappings and attacks against the Malian defence and security forces, foreign forces, MINUSMA and sometimes civilians.

iii. Mouvement pour l'unicité et le jihad en Afrique de l'Ouest (MUJAO)

127. MUJAO was established by the Mauritanian Hamada Ould Mohammed Kheirou, alias Abou Ghoum-Ghoum, a defector from AQIM,[201] and made its existence known when it claimed responsibility for a kidnapping in Algeria on 23 October 2011.[202] The objective of MUJAO, like that of AQIM, was to impose its interpretation of Islamic law in West Africa.[203] The group did not sign the Agreement on Peace and Reconciliation in Mali. Since 5 December 2012, it has been listed by the United Nations as being associated with Al-Qaida.[204]

128. MUJAO comprised many Malians, including Lemhar Arabs from Tilemsi, Fulanis from the regions of Gao and Mopti, and some Songhais, as well as foreign fighters from other West African countries, in particular Mauritania and Niger.[205] During the period from 2012 to 2013, the number of MUJAO fighters was estimated at between 500 and 1,000. During the defeat of 2013, many MUJAO members from the Arab community of Gao joined the Mouvement arabe de l'Azawad (MAA).[206] On 22 August 2013, another faction of the group merged with Al Moulathamoun ("men wearing the litham"), led by the Algerian Mokhtar Belmokhtar, to form Al Mourabitoun.[207] A very small group of

[198] IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 40.

[199] Testimony No. 450; Alta Grobbelaar and Hussein Solomon, The origins, ideology and development of Al-Qaeda in the Islamic Maghreb, Africa Review, 2015, pp. 153–154; European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel.

[200] AQIM continues to have financial resources to carry out its operations, in particular thanks to ransom money for the release of hostages. Alta Grobbelaar and Hussein Solomon, The origins, ideology and development of Al-Qaeda in the Islamic Maghreb, Africa Review, 2015, p. 155.

[201] Notice on MUJAO on the INTERPOL website. Testimony No. 370. The split was related to disagreements over the leadership of AQIM and over the sharing of resources, not to ideological disputes, as demonstrated by the continued collaboration between the two groups in 2012 and 2013 in Mali. See IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, pp. 23, 336.

[202] Le Monde, La trajectoire djihadiste du MUJAO du Nord du Mali au Niger, 23 May 2013; Notice on MUJAO on the INTERPOL website.

[203] Despite the stated religious objective of MUJAO, the group's leaders were known to be traffickers involved in the drug trade in particular. Notice on MUJAO on the INTERPOL website.

[204] See Consolidated United Nations Security Council Sanctions List: QDe. 134. Notice on MUJAO on the INTERPOL website.

[205] IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 240.

[206] Testimonies Nos. 350; 194; Confidential document of MINUSMA.

[207] IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, p. 15, pp. 17, 23, 25.

fighters who retained the name MUJAO remained, operating in the south of Gao. They claimed responsibility for some acts of violence in 2014.[208]

129. On 31 March 2012, MNLA and MUJAO took control of the city of Gao.[209] After ousting MNLA on 27 June 2012, MUJAO assumed control of the city of Gao and other areas in the region.[210] It also took control of Douentza (Mopti region) in September 2012 and Ménaka (then part of the region of Gao) in November 2012. Gao was recaptured at the end of January 2013.[211] MUJAO was weakened, although it carried out several attacks in Gao in the following months. Despite being a splinter entity of AQIM, MUJAO collaborated with AQIM and its operational capacities were largely dependent on AQIM. In 2012, MUJAO collaborated with AQIM and Ansar Eddine, and the three groups supported each other. MUJAO had an organized chain of command, heavy weaponry and communications capabilities,[212] as well as the capacity to plan, coordinate and conduct military operations.[213] It used hostage ransoms and drug trafficking to finance its operations and pay its fighters.[214]

130. Hamada Ould Mohammed Kheirou was considered to be the political and spiritual leader of MUJAO, which comprised five katibas: Osama bin Laden, led by Ahmed Al-Tilemsi, who was also considered to be the military leader of MUJAO; Usman Dan Fodio, led by Bilal Hicham of Niger, who was replaced at the end of 2012 by a Beninese named Abdoulah; Saladin, led by Sultan Oud Bady; Ansar Al-Sharia, led by the Malian Oumar Ould Hamaha; and Ansar Suna, composed of Songhais from the region of Gao. In 2012, Abdel Akim Al-Sarahoui and Adnan Abou Walid Al-Sahraoui, who was the spokesperson for the group at the time, took over the military command in Gao.[215]

iv. Al Mourabitoun ("the Almoravids")

131. Al Mourabitoun was established on 22 August 2013 and is still operational. The group was formed as a result of a merger between a faction of MUJAO and the group Al Moulathamoun ("men wearing the litham") (including Al Mouakaoune Biddam ("those who sign in blood")). Al Mourabitoun was founded by the Malian Ahmed Ould Amer, alias Ahmed Al-Tilemsi, and the Algerian Mokhtar Belmokhtar.[216] The group split on 15 May 2015, when Adnane Abou Walid Al-Sahraoui established Islamic State in the Greater Sahara (ISGS) and pledged allegiance to Islamic State in Iraq and the Levant (ISIL). Mokhtar Belmokhtar rejected that allegiance before formally returning to AQIM; Al

[208] Jeune Afrique, Mali: l'inquiétante résurgence du MUJAO, 14 February 2014.

[209] Testimony No. 194.

[210] Testimonies Nos. 370, 350, 162, 191, 194 and 222.

[211] ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 218; Confidential document of MINUSMA.

[212] Notice on MUJAO on the INTERPOL website.

[213] Notice on MUJAO on the INTERPOL website. See also: ICC, Decision confirming the charges against Al Hassan of 13 November 2019, footnote on p. 540 and para. 213.

[214] ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 210; IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, footnote 89, p. 336.

[215] Testimonies Nos. 350 and 370; Confidential document of MINUSMA. RFI, "Ils n'ont rien de musulmans": un jihadiste nigérien quitte le MUJAO au Nord Mali, 9 November 2012; IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017, pp. 15, 25, 336.

[216] After breaking away from AQIM in October 2012, Mokhtar Belmokhtar established, in December 2012, an independent group also associated with Al-Qaida named Al Moulathamoun, before aligning himself in 2013 with MUJAO, which was itself a splinter group of AQIM. Le Point, Marc Menier, Comment Mockar Belmokhtar s'est réconcilié avec AQMI, 10 January 2017.

Mourabitoun became a katiba of AQIM on 4 December 2015.[217] Al Mourabitoun did not sign the Agreement on Peace and Reconciliation in Mali and, since 2 June 2014, has been listed by the United Nations as being associated with Al-Qaida.[218]

132. Al Mourabitoun's stated objective was to create a Muslim unification movement on the African continent with direct allegiance to Al-Qaida.[219] Al Mourabitoun is composed mainly of fighters of Tuareg or Fulani origin, as well as some Lehmar Arabs from Mali. It also has fighters and commanders of foreign origin. The number of members of Al Mourabitoun has varied and is difficult to determine accurately. Estimates range from 100 to between 500 and 600 fighters, depending on the period.[220]

133. Al Mourabitoun is governed by an advisory council (*shura*), which is reportedly composed of six leaders of the organization who take decisions collectively. The organization also reportedly comprises three katibas. Al Mourabitoun's chain of command was not known with certainty during the early stages of its existence and seemed to be underpinned by Ahmed Al-Tilemsi (for Mali) and Mokhtar Belmokhtar (for Libya). After the death of Ahmed Al-Tilemsi in December 2014, Mokhtar Belmokhtar, who had been living as a refugee in Libya since 2013, became the undisputed leader of Al Mourabitoun, although his death had been announced several times without ever being confirmed by the group.[221] Al Mourabitoun had the capacity to plan, coordinate and conduct military operations. Its tactical objectives were to carry out attacks against the Malian Armed Forces, the armed groups that signed the Agreement on Peace and Reconciliation in Mali, MINUSMA, the Malian Army and French nationals. Al Mourabitoun is known for its large-scale attacks, including suicide attacks in Almousatrat, Bamako, Sévaré and Gao in Mali, as well as in Burkina Faso and Côte d'Ivoire. It had sources of funding, in particular hostage ransoms, which enabled it to carry out its operations and pay its fighters.[222]

v. Macina katiba

134. The Macina katiba was formed in January 2015 and is still operational. It is a military unit of Ansar Eddine, whose objectives it shares. Although it has a degree of independence, the Macina katiba, which is led by Amadou Koufa,[223] reports directly to Ansar Eddine's leader, Iyad Ag Ghaly. The group's name refers to the 19th century Fulani empire of Macina. Amadou Koufa's personal

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[217] See case No. CEI61.

[218] See Consolidated United Nations Security Council Sanctions List: QDe. 141. Notice on Al Mourabitoun on the INTERPOL website.

[219] An indication of the extent of the group's objectives, the name Al Mourabitoun ("the Almoravids") refers to the Almoravid dynasty, a confederation of tribes and later an empire in the 11th and 12th centuries encompassing Mauritania, Morocco, western Algeria and parts of the Iberian peninsula and of Mali.

[220] IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017; Confidential court document.

[221] Other important members of the group include former MUJAO members Omar Ould Hamaha (died 2014), Adnane Abou Walid Al-Sahraoui (before the establishment of Islamic State in the Greater Sahara in May 2015) and the Egyptian Abou Bakr Al-Nasr (died 2014). An Egyptian and former MUJAO member with the nom de guerre Aboudou Jana Al Moussiri was reportedly head of operations in 2015. His deputy, a Mauritanian by the name of Fawaz Ould Ahmed Ould Aheid, alias Ibrahim 10, has been detained by the Malian authorities since 2016. IFRI, Marc Mémier, AQMI et Al-Mourabitoun: Le djihad sahélien réunifié?, January 2017; Confidential court document.

[222] Confidential court document.

[223] Testimony No. 534. The Malian authorities and then the French armed forces announced the death of Amadou Koufa at the end of 2018. Subsequently, in March 2019, Koufa broadcast a video in which he denied having been killed and commented on events which occurred after his announced date of death. The Commission also viewed a video that suggested that Amadou Koufa was still alive in July 2019.

background as a Fulani reciter of the Qur'an, popular for his preaching in the community and for his origins in the village of Koufa, Niafunké cercle, in the region of Timbuktu on the border with the region of Mopti, contributed to the rapid rise of the Macina katiba in the central part of Mali.[224] Most of the members of the Macina katiba are Malians from the Fulani community, but the group also has members of other ethnicities and nationalities.

135. Amadou Koufa joined Ansar Eddine in 2012, but his efforts to gain a foothold in the central part of Mali were delayed as a result of the failure of the attack against southern Mali in early 2013.[225] The Macina katiba's area of activity comprises the region of Mopti and the northern parts of the regions of Ségou and Koulikoro. The Macina katiba launched a series of attacks in the central part of Mali in 2015, beginning with the attack on the Nampala military camp (Ségou region) in January.[226] In addition to launching attacks against the Malian defence and security forces, the Macina katiba implemented a policy designed to drive out State officials and anyone perceived to be sympathetic to the State, using a strategy of threats, kidnappings and targeted executions.[227] That strategy enabled it to take control of vast areas in the central part of the country, including in Macina and in the cercles of Ténenkou, Youwarou and Djenné (Mopti region). Without occupying villages, the group nevertheless caused schools to close, preached in the villages, obtained the voluntary or forced support of the local population, and tried to manage the lives of the local people in the conquered areas.[228] The Macina katiba also continued its attacks against the defence and security forces and against MINUSMA, in particular by placing improvised explosive devices, whose first victim was the civilian population.[229] Around 2018, the Macina katiba was also involved in multiple clashes with Bambara and Dogon self-defence groups. The Macina katiba thus has the capacity to plan, coordinate and conduct complex operations in the area.[230]

vi. Jama'a Nusrat ul-Islam wa al-Muslimin (JNIM)

[224] Stockholm International Peace Research Institute (SIPRI), Aurélien Tobie, Central Mali: Violence, Local Perspectives and Diverging Narratives, No. 2017/5, December 2017, pp. 10–11; HD, Adam Thiam, Centre du Mali, enjeux et dangers d'une crise négligée, March 2017, p.26; Testimonies Nos. 271 and 300; International Crisis Group (ICG), Central Mali: An Uprising in the Making?, Africa Report No. 238, 6 July 2016, pp.13–14.

[225] At the time of the attack on the city of Konna in January 2013, Amadou Koufa was expected to become the "emir" of Konna. Testimony No. 300; HD, Adam Thiam, Centre du Mali, enjeux et dangers d'une crise négligée, March 2017, p.26.

[226] The attacks attributed to the Macina katiba in 2015 include the attack on the locality of Djoura, the attack on Ténenkou (Ténenkou cercle, Mopti region), the attack in April on the local gendarmerie station in Boni (Douentza cercle, Mopti region), the attack on the Nara military camp (Nara cercle, Koulikoro region) and the attack in September on Séno Mango (Bankass and Koro cercles, Mopti region). Those attacks are generally attributed to the Macina katiba, although the connection cannot always be proven. Ansar Eddine has claimed responsibility for some of the attacks, such as the attack on the Nara military camp. HD, Adam Thiam, Centre du Mali, enjeux et dangers d'une crise négligée, March 2017; Jeune Afrique, Mali: nouvelle attaque jihadiste à Djoura, dans le Centre, 7 January 2015; VAO, Andar Dine revendique une série d'attaques au Mali, 6 July 2015; Testimonies Nos. 292 and 300.

[227] ICG, Central Mali: An Uprising in the Making?, Africa Report No. 238, 6 July 2016; HD, Adam Thiam, Centre du Mali, enjeux et dangers d'une crise négligée, March 2017, p. 14; Testimonies Nos. 238 and 292.

[228] Testimonies Nos. 238 and 300; ICG, Central Mali: An Uprising in the Making?, Africa Report No. 238, 6 July 2016, p. 10.

[229] See, for example, testimonies nos. 271, 238 and 397.

[230] While the Macina katiba initially relied on Ansar Eddine for logistical support, it now receives voluntary or forced logistical support from Fulani villages. It also finances its operations with hostage ransoms.

136. JNIM was founded on 1 March 2017 and is still operational and active. It is not a new movement, but rather the outcome of the merger of existing armed groups affiliated with Al-Qaida and operating in Mali (Ansar Eddine and its various katibas (fighting units), including the Macina katiba, the Sahelian katiba of AQIM (Al-Furqan katiba), and Al Mourabitoun). Iyad Ag Ghaly assumed the leadership of JNIM and renewed his allegiance to the emirs of Al-Qaida, AQIM and the Taliban. All those groups were already closely linked, but the merger made JNIM the most powerful of the extremist armed groups in the Sahel and the one best equipped to counter the growing influence of Islamic State in Iraq and the Levant (ISIL).[231]

137. The Group was not a signatory to the Peace and Reconciliation Agreement and has been listed by the United Nations since 4 October 2018 as being associated with Al-Qaida.[232] JNIM comprises fighters from merged groups and therefore includes members of different ethnic groups and communities, such as Tuaregs, Fulani, Bambara, Arabs and foreigners. Since its founding in 2017, JNIM has claimed responsibility for many attacks against the Malian defence and security forces, the French armed forces and MINUSMA, primarily in Mali, but also in other countries of the Sahel.[233] The armed groups that merged under the JNIM banner have some level of autonomy and each katiba retains its emir. Nevertheless, they all report to the head of JNIM, Iyad Ag Ghaly, and/or his second-in-command, Djamel Okacha aka Yahya Abou Al-Houman (died in February 2019). Despite its decentralized structure, JNIM can carry out complex and prepared attacks, and can also train fighters. It has sufficient resources to carry out its activities.

vii. Islamic State in the Greater Sahara (ISGS)

138. ISGS was founded on 15 May 2015. It is operational and has been growing rapidly since 2018. ISGS was born from a split of the group Al Mourabitoun. On 13 May 2015, Adnane Abou Walid Al-Sahraoui, an Al Mourabitoun commander who headed MUJAO in Gao in 2012, pledged his allegiance to ISIL. Traditionally loyal to Al-Qaida and AQIM, Mokhtar Belmokhtar rejected that allegiance, leading Adnane Abu Walid Al-Sahraoui to break away on 15 May 2015, even though that was not officially recognized by ISIL until October 2016.[234] ISGS did not sign the Peace and Reconciliation Agreement and has been listed by the United Nations since 23 February 2020 as being associated with ISIL.[235] ISGS operates in the area of the three borders between Mali, Niger and Burkina Faso (Liptako-

[231]JNIM announced its founding in a video sent to a Mauritanian news agency on 1 March 2017. JNIM was announced with the slogan "one banner, one organization, one emir". The following people appeared in the video: Iyad Ag Ghali (leader of Ansar Eddine), Djamel Okacha aka Yahya Abou Al-Houman (emir of Katiba Al-Furqan of AQIM), Amadou Kouffa (emir of the Macina katiba of Ansar Eddine), Abou Hassan al-Ansari (one of the leaders of Al Mourabitoun) and Abou Abelrahman Al-Sahaji, cadi (Islamic judge) of AQIM.

[232]See Security Council consolidated list: QDe. 159; Notice on JNIM on the INTERPOL website.

[233]See, for example, case No. CEI93; Case No. CEI97; Notice on JNIM on the INTERPOL website. See also IHL Resource Desk for Mali, Legal brief, Legal classification of the situation in Mali and applicable international law, October 2019, p. 10.

[234]In March 2019, the group joined ISIL-West Africa, which has since been claiming responsibility for the attacks perpetrated by ISGS. See also IHL Resource Desk for Mali, Legal brief, Legal classification of the situation in Mali and applicable international law, October 2019, p. 10; IFRI, Marc Mémier, AQMI et Al-Mourabitoun Le djihad sahélien réunifié ?, January 20 2017; European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel.

[235]See Security Council consolidated list: QDe. 163; See also Notice on ISGS on the INTERPOL website. The emir of ISGS, Adnane Abou Walid Al-Sahraoui, has been listed since 9 August 2018 (Qdi.415).

Gourma).[236] It started out as a microgroup with a few dozen fighters, but has since grown to comprise at least one hundred fighters. Abdel Hakim Al-Sahraoui, military leader for MUJAO in Gao in 2012, and his fighters have reportedly joined its ranks.[237]

139. The Commission did not document any emblematic cases attributable to ISGS. While the group has been active in Mali since the end of 2016 and has since been fighting against the defense and security forces, the French forces and the GATIA and MSA-D armed groups, its activities in Mali before 2018 do not appear to have affected civilians significantly. ISGS has been growing since 2018, and especially since 2019. It is now firmly established in Mali, to the point where it has become the priority for the French forces and the Joint Force of the Group of Five for the Sahel since January 2020.[238] Although ISGS and JNIM are competitors, they collaborated from time to time and avoided each other on the ground until the beginning of 2020. They are now in open conflict.[239]

Conclusion on armed groups

140. In the light of the elements presented in this section, the Commission considers that there are reasonable grounds to believe that the vast majority of the armed movements described above have a sufficient level of organization to qualify as “armed groups”, as understood in international humanitarian law and under article 8 of the Rome Statute. This applies in particular to MNLA (at least since January 2012); HCUA (since its founding in May 2013); MAA (since its founding at the end of 2012, then the two splinter groups MAA-Plateforme and MAA-CMA); the local self-defence groups Ganda Izo, Ganda Koy, and FLN (since January 2012 or since their founding in 2012 and at least until 2015); GATIA (since its founding in August 2014); MSA (since September 2016); some self-defence groups in the central part of Mali, including Dan Na Ambassagou (at least since early 2017) and at least one group of traditional Bambara hunters from Macina cercle (since 2016); Ansar Eddine (since January 2012)[240] and its Macina and Gourma katibas (since 2015); AQIM (already before January 2012);[241]

[236]In Mali, it operates in Ansongo cercle, south of the Gao region, and in the Ménaka region, and has recently moved into the Gourma region, south of Timbuktu. See also notice on ISGS on the INTERPOL website. Map of attacks claimed by ISGS on the Menastream website.

[237]Twenty-third report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da’esh), Al-Qaida and associated individuals and entities (S/2019/50), para. 36. According to the highest estimates, there were just over 400 fighters in 2018. J. Warner and C. Hulme, The Islamic State in Africa: Estimating Fighter Numbers in Cells Across the Continent, Center for Combating Terrorism, August 2018. In its early days, it was composed of fighters from the Lehmar Arab tribes, but over time it has recruited indigenous people from the regions where it operates, notably Fulani and Daoussahak from Ménaka and Gao. RFI, Qui sont les jihadistes en Afrique de l'Ouest, interview with Mathieu Pellerin, 28 January 2020; European Council on Foreign Relations, Mapping armed groups in Mali and the Sahel.

[238]Twenty-fourth report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da’esh), Al-Qaida and associated individuals and entities (S/2019/570), 15 January 2019, para. 34. Le Figaro, L'Etat islamique désigné ennemi numéro 1 au sahel, 15 January 2020; Dakaractu, Ennemi prioritaire de la France et du G5 Sahel : Comment l’ex-ISGS en est arrivé là…, 15 January 2020; INTERPOL notice on ISGS;

[239]Twenty-third report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da’esh), Al-Qaida and associated individuals and entities (S/2019/50), 15 January 2019, para. 36. Report of the Secretary-General on the situation in Mali (S/2017/1105), 26 December 2-17, para. 33. RFI, Qui sont les jihadistes en Afrique de l'Ouest, interview with Mathieu Pellerin, 28 January 2020;

[240]For a similar conclusion, see ICC, decision confirming the charges against Al Hassan of 13 November 2019, para. 206.

[241]For a similar conclusion, see ICC, decision confirming the charges against Al Hassan of 13 November 2019, para. 206.

MUJAO (at least between January 2012 and 2014); Al Mourabitoun (since its founding in August 2013); JNIM (since March 2017), and ISGS (since May 2015).[242]

(C) Foreign and international forces

141. Since 2013, a large number of foreign and international forces have been deployed in Mali; some, such as those of France and the United Nations, are important players in the management of the crisis.[243]

[242]In any case, all groups belonging to JNIM individually have a sufficient degree of organization.

[243]The Commission also notes the growing strength of the Joint Force of the Group of Five for the Sahel, which is composed of troops from Burkina Faso, Chad, Mali, Mauritania and Niger and has been mandated to "combat terrorism and transnational organized crime" in the five countries. Although the force was officially established in 2014, its operational activities started in earnest at the end of 2017; nonetheless, having been slowed by the attack against its headquarters in Sévaré in 2018, those activities remain limited and were therefore of little relevance to the temporal mandate given to the Commission. See Geneva Academy, The War Report, Armed Conflicts in 2018, April 2019, pp. 106-107; See also IHL Resource Desk for Mali, Legal brief, Legal classification of the situation in Mali and applicable international law, October 2019, p. 10.

1. *French armed forces*

142. In January 2013, when the three regions of northern Mali (Gao, Timbuktu and Kidal) and part of the north of the Mopti and Ségou regions were under the control of Ansar Eddine, AQIM and MUJAO for several months, the three groups launched a coordinated offensive against the southern part of Mali, heading towards Mopti, Sévaré and Diabali. On 10 January 2013, they clashed with the Malian Armed Forces in Konna, a locality about 50 kilometres north of Sévaré, causing heavy losses on the Malian Armed Forces, which were forced to retreat to the city of Sevaré. The Transitional Government of Mali urgently requested military assistance from France, which responded positively. That was the beginning of the French military operation in Mali called "Serval", which started on 11 January 2013 and lasted until 31 July 2014.

143. Even before launching the first air strikes with their Mirage 2000D fighter jets from neighbouring Chad against the locality of Konna during the night of 11 to 12 January 2013, the French army special forces had deployed in the locality of Sévaré on 10 January in order to secure the airport, and had intervened with "Gazelle" helicopters in Konna during the day on 11 January.[244] The Malian Armed Forces and the French forces officially recaptured the locality of Konna on 17 January 2013. Between that date and 1 February 2013, they launched a second phase of the operation, with substantial military resources on the ground and in the air, stopping the advance of the extremist armed groups towards the south of Mali and leading to the recapture of the locality of Diabali and the three largest cities in the northern regions of Mali (Gao, Timbuktu and Kidal). From the beginning of February to the beginning of May 2013, they launched a third phase of the operation with the objective of destroying what remained of the forces of Ansar Eddine, AQIM and MUJAO, which had retreated to the Adrar des Ifoghas, a mountainous area in the Kidal region. Between May 2013 and the end of July 2014, the French forces of *Operation Serval* continued to conduct operations to secure and/or combat extremist armed groups, working alone or with the Chadian forces, the Malian Armed Forces and, in some cases, the international forces of the African-led International Support Mission in Mali (AFISMA) and later MINUSMA.[245]

144. The stated objective of *Operation Serval* was to help the Malian Armed Forces stop the advance of Ansar Eddine, AQIM and MUJAO and to repel them while protecting the civilian population; to help Mali regain its territorial integrity and sovereignty; and to facilitate the rapid deployment of AFISMA and EUTM. According to a report by the French National Assembly, on average more than 4,000 troops

[244] See case No. CEI28. See also French National Assembly report No. 1288 - Information report of the Defence and Armed Forces Committee on *Operation Serval* in Mali, 18 July 2013, pp. 50-51; French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 118-119; Jeune Afrique, Mali : retour sur la bataille décisive de Konna, 30 January 2014. The French army special forces fall under the Special Operations Command, which coordinates the activities of all special forces from all branches of the French army. Based in Paris, the Command was led at the time of the events by General Christophe Gomart. The troops deployed in Mali by the special forces were under the Monfort Marine Commando and the First Marine Infantry Parachute Regiment, assisted by "Gazelle" helicopters of the 2nd Special Operations Squadron of the Fourth Special Forces Helicopter Regiment.

[245] French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 118-119; French National Assembly report No. 1288 - Information report of the Defence and Armed Forces Committee on *Operation Serval* in Mali, No. 1288, 18 July 2013, pp. 51-55.

were deployed during *Operation Serval*, with that number peaking at almost 6,500 men at the height of the operation in 2013, before falling back to around 2,500 men in 2014.[246]

145. To provide a legal basis for that intervention, the French authorities invoked not only the request for assistance from the Government of Mali, but also Security Council resolution 2085 (2012) of 20 December 2012, and the concept of collective self-defence contained in Article 51 of the Charter of the United Nations.[247] On 25 April 2013, the Security Council adopted resolution 2100 (2013), by which it established MINUSMA and also explicitly authorized France to use force on Malian territory in support of MINUSMA.[248]

146. In 2014, the porous nature of the borders of the Sahel-Saharan strip, the topology of the area and the cross-border nature of the armed groups operating there prompted France to regionalize its intervention to the entire Sahel-Saharan strip. In that context, *Operation Serval* ended on 1 August 2014 and was transformed into a new operation, called "Barkhane", which still operates in five countries of the Sahel-Saharan strip (Mauritania, Mali, Burkina Faso, Niger and Chad). The stated objectives of the operation are "to fight against armed terrorist groups by depriving them of their means of combat", to support the partner armies of the Group of Five for the Sahel countries, to encourage the people to rely on the partner armies for their security, and to create the conditions for the return of the State.[249]

147. *Operation Barkhane* is today the largest French military operation abroad. At the operational level, it has a base in Ndjamena, Chad, which serves as its headquarters, along with bases in Niamey and Agadez, Niger, and several land bases in Mali (Kidal, Gao, Timbuktu, Gossi, Ménaka and Tessalit), where the French soldiers operating in Mali are deployed. France deployed between 3,500 and 3,600 soldiers in 2015 and 2016, and since February 2020, has deployed 5,100 men and a number of sophisticated pieces of military equipment (drones, fighter jets, helicopters, light and heavy armoured

[246]French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 49, 80, 137; French National Assembly report No. 1288 - Information report of the Defence and Armed Forces Committee on *Operation Serval* in Mali, No. 1288, 18 July 2013, pp. 35, 42, 56-60; Report of the Secretary-General on the situation in Mali (S/2013/189), 26 March 2013, para. 4. See also the site of the Ministry of Defence, Dossier SERVAL. Operation Serval was led at the strategic level by the centre for the planning and conduct of operations, while the force commander was Grégoire de Saint-Quentin and General Bernard Barrera was the ground commander for Headquarters, the 3rd Mechanized Brigade and all units deployed in Tessalit and Gao. The brigades that participated in the operation were the 3rd Mechanized Brigade, the 6th Light Armoured Brigade, the 9th Light Armoured Marine Brigade and the 11th Parachute Brigade, with the tactical support of an airmobile group and Special Operations Command special forces.

[247]French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 52, 67; French National Assembly report No. 1288 - Information report of the Defence and Armed Forces Committee on *Operation Serval* in Mali, No. 1288, 18 July 2013, pp. 11, 31-32; Website of the Permanent Mission of France to the United Nations; *Operation Barkhane* press kit, 17 February 2020, p. 3.

[248]Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)), para. 14. The status of Operation *Serval* was set out in an agreement between the French and Malian Governments in the form of an exchange of letters signed on 7 and 8 March 2013 in Bamako. That agreement was reaffirmed in Decree No. 2013-364 of 29 April 2013, published in the French Official Gazette of 30 April 2013. See also French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 49-50;

[249]As part of this operation, the French army receives assistance from other armies, in particular the Danish, United Kingdom and Estonian armies. French Ministry of the Armed Forces, *Operation Barkhane*, reference file.

vehicles, etc.).[250] Since *Operation Barkhane* was commissioned in August 2014, French forces have conducted several military operations on Malian soil, either alone or jointly with the Malian defence and security forces, and sometimes in coordination with MSA and GATIA, against extremist armed groups in the three regions of northern Mali, namely Timbuktu, Gao and Kidal, and since 2015, in the regions of Mopti and Ségou.[251]

2. United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)

148. Following the coup d'état of 22 March 2012, the Transitional Government, established following the signing of a framework agreement between ECOWAS and the leaders of the coup d'état on 6 April 2012, requested the assistance of the United Nations. In response, on 20 December 2012, the Security Council adopted resolution 2085 (2012), in which it authorized the deployment of AFISMA for an initial period of one year. The resolution provided, inter alia, for AFISMA to assist Mali in rebuilding its armed forces so that it could regain control of the northern areas of its territory, while protecting the civilian population.[252] While it was initially planned to deploy gradually in Mali after a preparatory period, AFISMA had to precipitate its deployment following the attack on Konna in early January 2013 by Ansar Eddine, AQIM and MUJAO and the subsequent French military intervention. After deploying nearly 6,000 men in Mali, it participated in some operations alongside Malian and French forces and gradually took over responsibility for securing the areas in which the State had regained control.[253]

149. After exploring several options,[254] the Security Council effectively established MINUSMA through its resolution 2100 (2013) of 25 April 2013 as a multidimensional integrated stabilization mission. The initial seven-point mandate[255]of MINUSMA was renewed in 2014 and comprised three main priorities: security, stabilization and protection of civilians, (ii) support for the national political dialogue and national reconciliation, and (iii) support for the restoration of State authority throughout the country, the reconstruction of the Malian security sector, the promotion and protection of human rights and humanitarian assistance.[256] Since 2015 and the signing of the Peace and Reconciliation

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[250]Report of the French Senate Committee on Foreign Affairs, Defence and Armed Forces of 18 April 2018 on *Operation Barkhane* and the Group of Five for the Sahel; French National Assembly report No. 794 - Information report on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 80, 89 and 137; Ministry of the Armed Forces, *Operation Barkhane*, reference file. See also IRIS, Le contexte sécuritaire au Nord et Centre du Mali: Les enjeux d'acteurs à l'horizon 2019, August 2018.

[251]See Geneva Academy, The War Report, Armed Conflicts in 2018, April 2019, pp. 110-111; IHL Resource Desk for Mali, Legal brief, Legal classification of the situation in Mali and applicable international law, October 2019, p. 12. Libération, Au Sahel, "je n'ai pas besoin de canons supplémentaires, mais il nous faut gagner en mobilité", 9 July 2018.

[252]Security Council resolution 2085 (2012) of 20 December 2012 (S/RES/2085 (2012)), para. 9. See also Security Council resolutions 2056 (2012) and 2071 (2012) dealing with the modalities for the intervention of ECOWAS in Mali.

[253]Chadian troops intervened under their national command in the weeks following the French intervention of January 2013 before being integrated into AFISMA in March 2013.

[254]Report of the Secretary-General on the situation in Mali (S/2013/189), 26 March 2013.

[255]The seven points were: (1) stabilization of key population centres and support for the reestablishment of State authority throughout the country; (2) support for the implementation of the transitional road map, including the national political dialogue and the electoral process; (3) protection of civilians and United Nations personnel; (4) promotion and protection of human rights; (5) support for humanitarian assistance; (6) support for cultural preservation; and (7) support for national and international justice. Security Council resolution 2100 (2013), 25 April 2013.

[256]Security Council resolution 2164 (2014) of 25 June 2014 (S/RES/2164 (2014)).

Agreement, MINUSMA has been mandated, as a priority task, to support the implementation of the Agreement, particularly with regard to the implementation of the political and institutional reforms called for in therein.[257]

150. Since its inception, MINUSMA has had robust rules that allow it to, among other things, "take all necessary means" to address threats to the fulfilment of its mandate, including, when necessary, using armed force, either alone or in cooperation with defence and security forces.[258] MINUSMA deployed its uniformed personnel gradually after having absorbed the troops of AFISMA, totalling approximately 12,000 troops and nearly 2,000 police by December 2019. MINUSMA has bases in the localities of Aguelhok, Ansongo, Bamako, Ber, Diabali, Douentza, Gao, Goundam, Kidal, Ménaka, Mopti-Sévaré, Tessalit and Timbuktu.[259]

VIII. Establishment of the facts and circumstances

151. The Commission recalls that it followed a strategy for the selection of cases to be investigated to document, as a priority, serious incidents that were representative of the different temporal and geographical phases of the crisis, taking into account the main actors and criteria such as the scale, nature, modus operandi and impact of the violations, abuses and crimes. The investigations presented in this section are therefore not intended to be exhaustive and reflect only some of the abuses committed between 1 January 2012 and 19 January 2018.

152. In the interest of impartial presentation and in order to understand the phases and trends of the crisis in Mali for the period of its mandate, the Commission chose to present the incidents investigated in chronological order, under three periods. The first period began on 17 January 2012 with the outbreak of hostilities and ended on 18 June 2013 with the signing of the Ouagadougou preliminary agreement (A). The second period began with that agreement and ended with the signing of the Peace and Reconciliation Agreement in Bamako in May and June 2015 (B). The third period covered the period from the Peace and Reconciliation Agreement to 19 January 2018, the date of establishment of the Commission (C).

(A) From the beginning of hostilities in the city of Ménaka to the Ouagadougou preliminary agreement (January 2012-June 2013)

153. On 17 January 2012, the new crisis in Mali began with an MNLA attack against the military base of the city of Ménaka. In the days and weeks that followed, several armed groups (MNLA, Ansar Eddine, AQIM and MUJAO) attacked other military camps in the Kidal region, in particular Aguelhok and Tessalit, and took control of them in January and March 2012. The increasing number of defeats on the government side led to a mutiny of non-commissioned officers and soldiers that turned into a coup d'état on 22 March 2012. The coup d'état, which only accentuated the disorganization of the army,

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[257] Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)); Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)); Security Council resolution 2391 (2017) of 8 December 2017 (S/RES/2391 (2017)); Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)).

[258] Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)); Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)); Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)); Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019), para. 19.

[259] Website of MINUSMA, Staffing; MINUSMA, military deployment maps for 2015 and 2018.

allowed the armed groups to take control of the three largest cities in northern Mali (Timbuktu, Kidal and Gao) between late March and early April. On 6 April 2012, MNLA unilaterally declared the independence of "Azawad".[260]

154. The differences between the independence demands of MNLA and those of the extremist armed groups that wished to impose their interpretation of Islam in the regions of northern Mali were becoming pronounced. The alliance, which had been in place since January 2012, collapsed very quickly. After having gradually pushed MLNA aside, Ansar Eddine, AQMI and MUJAO took exclusive control of the three regions of northern Mali (Kidal, Gao and Timbuktu), as well as the northern part of the regions of Ségou and Mopti. That was the case until January 2013. At the same time, in the Government-controlled south of the country, CNRDRE, which carried out the coup d'état led by Captain Amadou Haya Sanogo, signed an agreement with ECOWAS on 6 April 2012 to resolve the crisis. The deposed President of the Republic, Amadou Toumani Touré, resigned and Diocounda Traoré, Speaker of the National Assembly, became interim President and formed a Transitional Government.

155. In January 2013, as negotiations between the Transitional Government and the armed groups began in Burkina Faso, Ansar Eddine, AQIM and MUJAO launched a large-scale coordinated offensive towards the south of the country. Before reaching Sévaré, the three groups clashed with the defence and security forces on 9 and 10 January 2013 in Konna. The clashes caused heavy losses among the Malian Armed Forces, who are forced to retreat. The locality of Konna came under the control of the extremist armed groups. At the same time, the groups launched an offensive against the locality of Diabali in the Ségou region, and took control of it on 14 January 2013.

156. The Transitional Government requested urgent military assistance from France, which responded immediately by launching *Operation Serval* on 11 January 2013. Through their intervention, the French forces reversed the balance of power and, together with the Malian defence and security forces, inflicted heavy losses on Ansar Eddine, AQIM and MUJAO. Within two weeks, the localities of Konna, Diabali, Gao, Timbuktu and then Kidal were recaptured from the extremist armed groups, and the fighting continued until May in the Adrar des Ifoghas, a mountainous area of the Kidal region where they had taken refuge.[261] At the same time, peace talks were resuming between the Government of Mali and MNLA, as well HCUA, a newly created group made up notably of defectors from Ansar Eddine. The talks led to the signing of the Ouagadougou preliminary agreement on 18 June 2013.

1. Region of Kidal

[260] Azawad is a term derived from the Tamashek word "Azawa", a large food bowl made of wood by Tuareg blacksmiths and, by analogy, refers to a large flat plain (the fossil valley of the central Sahara) located north of the city of Timbuktu in the present-day region of Taoudéni. Since the 1990s, the expression, to which a "D" has been added, has taken on a broader connotation expressing the political and territorial demands of the Tuareg rebellions. In this context, Azawad is a land area encompassing the three or, since 2016, five regions of northern Mali (Kidal, Gao, Timbuktu, Ménaka and Taoudéni) and the northernmost part of the Mopti and Ségou regions.

[261] However, the French armed forces had asked the Malian Armed Forces not to enter the city of Kidal, which had provided the MNLA and then CMA armed groups with an opportunity to retake and then continue to exercise control over the city and the area. The Malian Armed Forces returned to Kidal in 2013 with the support of MINUSMA, but were driven out by CMA armed groups on 21 May 2014 following a visit by the Prime Minister of the day. See case No. CEI44.

i. 18 to 24 January 2012 - Summary execution of members of the Malian Armed Forces during the attack against the Aguelhok military camp attributable to Ansar Eddine and AQIM[262]

157. The attack against the military camp of Aguelhok in Tessalit cercle took place in the early days of the conflict. The death, after one week of siege, of the hundred or so soldiers deployed there deeply traumatized the Malian population and the Malian Army. Despite the huge impact of that event, it was still unclear how the event unfolded, who specifically was responsible for the attack, and what types of abuses were committed. Based on the information it collected, the Commission can establish the chronology of events and the presumed responsibilities for the abuses committed.

Attack against the military camp and the Teacher Training Institute in Aguelhok on 18 January 2012

158. On Tuesday, 17 January 2012, soldiers at the Aguelhok military camp led by Captain Sékou Traoré were on their guard. The city of Ménaka had just been attacked, the population of Aguelhok was beginning to flee upon the arrival of armed men dressed in "boubous", short trousers and military vests, and some of their Tuareg comrades were deserting. The next morning, around 5.30 a.m., about 100 men armed with rocket launchers, AK-47s and mortars attacked the military camp from its main entrance. After failing once, the assailants managed to cut the telephone lines of the camp[263]and to enter the Institute neighbouring the camp. From the Institute, the assailants attacked the camp with heavy weapons, but the soldiers at the camp were unable to retaliate immediately, for fear of injuring the students who were in the camp. However, the fighting intensified rapidly, resulting in the death of one member of the Malian Armed Forces (who was guarding an outpost near the sub-prefecture) and the injury of many others, who were taken to the infirmary for treatment. Many of the assailants were also killed or wounded during the fighting. Unable to gain the upper hand, the assailants fled, using young male students of the Institute as human shields but leaving the female students at the Institute. Arriving at their rallying point located about 5 km from Aguelhok, the assailants questioned the young male students of the Institute about the presence of soldiers among them and forced them to pray before releasing them in the evening.[264] Although the assailants were not able to capture the camp following the attack of 18 January 2012, they seriously damaged the defences of the Malian military, interrupting their means of communication and drastically curtailing their ammunition. The attack also caused the desertion of several soldiers from the camp, including an (identified) commander, as the assailants took weapons and ammunition with them.[265]

Siege of the camp and city of Aguelhok by extremist armed groups and MNLA (Thursday 19 to Sunday 22 January 2012)

159. The next day, 19 January, the assailants laid siege to the camp and city of Aguelhok. In an interview with Sahara Media, Iyad Ag Ghaly, head of Ansar Eddine, confirmed that he had taken control of the locality of Aguelhok.[266] The soldiers of the 132nd Military Infantry Company, led by Colonel

[262]Case CEI01.

[263]Testimonies Nos. 433, paras. 15-16 and 458, para. 9; Government investigation report on Aguelhok, February 2012, p. 40. See also Google Maps showing the location of the base station.

[264]Testimonies Nos. 433, paras. 22-23; 458, paras. 8-16 and 459, paras. 16-17. Government investigation report on Aguelhok, February 2012, p. 21. FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-14.

[265]Testimony No. 459, para. 4; Government investigation report on Aguelhok, February 2012, p. 19.

[266]Sahara Media, Le Chef d’Ansar Dine à Sahara Médias, 19 January 2012.

Major Mohamed Abderrahmane Ould Meydou, were sent in as reinforcements to resupply and rescue the soldiers of the Aguelhok military camp. They fell into two successive MNLA ambushes on 19 and 20 January 2012 and stopped their advance at In-Emsal, about 15 km south of Aguelhok. Many of the soldiers (between 50 and 100 depending on the source)[267] were killed and a number of others were captured. Those who remained were forced to turn back without being able to resupply and rescue the Aguelhok camp.[268]

Failed attempt by Iyad Ag Ghaly to obtain the surrender of the Aguelhok camp on 23 January 2012

160. Deprived of reinforcements, the Aguelhok camp exhausted its last resources. On Monday, 23 January 2012, Iyad Ag Ghaly sent a former Master Corporal of the Malian Army (identified) from Aguelhok and nicknamed "Bird" to demand the surrender of Captain Sékou Traoré and his men. The emissary handed the Captain a radio and gave him until the next day to surrender, failing which the assault would be launched without further delay. After discussing the matter with his superiors, Captain Sékou Traoré refused to surrender and took the emissary prisoner.[269]

Final assault and summary execution of Aguelhok soldiers on 24 January 2012

161. The next morning, around 6 a.m., the assault was launched by men led by Iyad Ag Ghaly and Sheikh Ag Aoussa. Greater in number and better armed than the Malian Armed Forces, which were short on weapons and ammunition, the assailants were able to quickly surround the camp and enter it late in the morning.[270]

162. While some soldiers of the Malian Armed Forces were killed in the fighting, others, short on ammunition, surrendered to the assailants and were executed on the spot. Other soldiers were captured, brought back to the front of the camp and executed. Some soldiers from the camp who managed to take refuge in the city were hunted down and shot in the houses where they had taken refuge. Wounded soldiers in the camp infirmary were shot in their beds.[271] In all, some 100 soldiers of the Malian Armed Forces were killed, although it was not possible to determine the exact number. While it was not possible to specify the conditions of their death in all cases, the Commission has reasonable grounds to believe that some of them were shot when they were hors de combat, either because they had been wounded or because they had laid down their arms.[272] The forensic analysis conducted by the Commission on the basis of photographic and video documentation did not allow it to confirm the

[267] Testimony No. 459, paras. 19-21; MNLA, press release No. 03/01/2012-MNLA, 21 January 2012.

[268] Testimony No. 459, paras. 19-21; Government investigation report on Aguelhok, February 2012, pp. 7-8, 13, 32, 42, 46-47. On 21 January 2012, MNLA claimed in a press release that it had intercepted the Malian Army convoy sent to reinforce the Aguelhok garrison; MNLA, press release No. 03/01/2012-MNLA, 21 January 2012.

[269] Testimony No. 459, paras. 19-21; Government investigation report on Aguelhok, February 2012, pp. 9, 13, 15-16 See in particular the testimony of "Bird" to Al Jazeera. Al Jazeera, Investigating 'massacre' of soldiers in Mali, 24 April 2013.

[270] Testimonies Nos. 433, paras. 35-38, 458, paras. 28 and 459, paras. 25-29; Government investigation report on Aguelhok, February 2012, pp. 11, 14, 21-22, 25, 31, 41, 44-45; FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-14.

[271] Testimonies Nos. 433, paras. 35-38, 454, paras. 22-33, 457, para. 13 and 459, paras. 38-41; Government investigation report on Aguelhok, February 2012, pp. 11, 14, 21-22, 25, 31, 41, 44-45; FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-14.

[272] Testimonies 454, paras. 22-25 and 459, paras. 38-41.

method of execution of the soldiers who were shot, in particular whether some of them had had their throats slit, as some media outlets claim.[273]

163. In the evening of 24 January 2012, airplanes of the Malian Army flew over Aguelhok, even though the assailants had already left the locality. The forces of Colonel El Hadj Ag Gamou arrived the next morning around 10 a.m. and witnessed the death of the soldiers of the Aguelhok camp. With the help of students from the Teacher Training Institute (IFM), they buried the bodies in two mass graves in the immediate vicinity of the camp.[274]

164. In light of the above, the Commission has reasonable grounds to believe that the assailants at the Aguelhok military camp used students of the Institute as human shields to cover their escape during the attack of 18 January 2012 and executed many of the Malian soldiers while they were hors de combat, either because they had been wounded or because they had laid down their arms during the final assault of 24 January.

[273]Forensic analysis by the Commission's forensic doctor, 22 November 2019.

[274]Testimonies 433, paras. 43-50, 454, paras. 34-36, 458, paras. 29-33 and 459, paras. 35-36. See also Government investigation report on Aguelhok, February 2012, pp. 9, 23 and 45.

Possible responsibility for crimes committed during the attack against the Aguelhok camp

165. The question of responsibility for the abuses committed at Aguelhok continues to be the subject of considerable controversy. In addition to the responsibility of Ansar Eddine and AQIM, public reports also attribute responsibility for those abuses to MNLA, owing notably to several MNLA communiqués claiming its involvement in the attack and to the proximity of MNLA to extremist armed groups at the time of the attack.[275] An FIDH report also attributed the 24 January attack to MNLA and Ansar Eddine, based, in addition to the above-mentioned elements, on the statement of a student from IFM in Aguelhok, who allegedly helped the assailants load weapons onto a pick-up truck flying the MNLA flag.[276] The Malian Government has, on several occasions, formally accused MNLA and AQIM of committing those abuses.[277]

166. The Commission notes that three factors make it difficult to determine specific responsibility or responsibilities. The first is confusion about the chronology of events. While the Commission's investigation clearly established the existence of two attacks against the camp, the first on 18 January 2012 (during which the assailants fired on the camp from IFM and took students of the Institute hostage to ensure their retreat), and the second on 24 January 2012 (during which Malian soldiers from the camp were executed), several reports, including those of FIDH and OHCHR, indicate that those two events occurred on the same day.[278] The second factor is the absence of elements which could be used to distinguish members of the armed groups at the start of the conflict (in particular those of MNLA and Ansar Eddine). Ansar Eddine, established in December 2011, was still little known in January 2012, and it was difficult, if not impossible, for many witnesses to accurately identify the group or groups that carried out the attack against the camp.[279] The third and most significant factor is the considerable contradictions and propaganda of MNLA regarding the circumstances of the attack against the Aguelhok camp. While it has always claimed that it complies with international humanitarian law and has never executed Malian soldiers, MNLA initially claimed responsibility for the attack,[280] saying that Iyad Ag Ghaly was not present during the attack and blaming "the Malian helicopters for the death of their soldiers",[281]before retracting and stating that no MNLA soldier was in Aguelhok "on the day of the fighting".[282] Contacted by the Commission, members of MNLA and one of their lawyers maintained that the group bore no responsibility for the attack of 24 January 2012 and for the execution of the

[275]OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para 19. African Union, Report of the Fact-Finding Mission to the Republic of Mali, 3-7 June 2013.

[276]FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-13 (testimony of LD).

[277]Malijet.com, At the rostrum of the nineteenth session of the Human Rights Council, Minister of Justice and Keeper of the Seals Maharafa Traore asks for support from the international community, 12 March 2012. The Office of the Prosecutor of the International Criminal Court also reported this information in its analysis report on the situation in Mali. ICC, Office of the Prosecutor, report submitted pursuant to article 53 (1), 16 January 2013.

[278]OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para 19. FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-14.

[279]Most of the witnesses identified the assailants simply by their clothing, ethnicity, skin colour or language spoken.

[280]MNLA, press release No. 03/01/2012-MNLA, 21 January 2012. Press release No. 06 15/02/2012-MNLA of 15 February 2012. See also MNLA communiqué stating that "the summary abuses described in Aguelhok are neither part of the code of honour nor the art of warfare of the Azawadians," 15 February 2012.

[281]Press release No. 06 15/02/2012-MNLA of 15 February 2012. See also MNLA communiqué stating that "the summary abuses described in Aguelhok are neither part of the code of honour nor the art of warfare of the Azawadians," 15 February 2012.

[282]Al Jazeera, Investigating 'massacre' of soldiers in Mali, 24 April 2013.

Malian soldiers. They also claimed that the press releases claiming responsibility for the attack just reflected the desire of MNLA to take credit for the military successes of extremist armed groups.[283]

167. The fact that MNLA denies the crimes is not proof of its innocence. On the contrary, faced with the unanimous condemnation of the abuses committed in Aguelhok, MNLA, in search of moral and political legitimacy, has every interest to deny its responsibility for the attack. Nonetheless, based on its investigations, the Commission is not able confirm, to the required standard of proof, that MNLA elements were present during the attacks against the Aguelhok military camp. Indeed, none of the eyewitnesses to the attacks against the camp on 18 and 24 January 2012 interviewed by the Commission provided any evidence to allow it to conclude that members of MNLA were present on the days of the two attacks. It cannot even reach such a conclusion based on the documents provided by various sources, including government sources.[284] The only evidence available to the Commission suggesting the responsibility of MNLA in the attack against the camp is the uncorroborated testimony of the witness cited by FIDH in its report, who reportedly stated that he had seen an MNLA flag "on the vehicle onto which a Tuareg captain had asked him to load weapons".[285] The Commission was unable to meet with that witness. However, it notes that, contrary to the suggestion on that report, the testimony relates only to the attack of 18 January 2012 against the IFM. Furthermore, owing to the imprecise nature of the testimony (as to the chronology of events, the description of the flag), the lack of corroboration of the testimony despite the dozens of testimonies gathered by the Commission (directly and indirectly), and the contradictions of the FIDH report with the Commission's own investigations (for example, as to the concomitance of the attack against the Institute and the taking of the camp), the Commission could not establish the responsibility of MNLA based on that document alone.

168. On the other hand, the Commission has sufficient evidence to allow it to conclude that Ansar Eddine and AQIM were responsible for the abuses committed at Aguelhok. In particular, the Commission collected a significant number of testimonies where the witnesses characterized the assailants as "Islamists" or "jihadists", for a variety of reasons: the flags used by the assailants ("black with white writing in Arabic"); their clothing ("short trousers, boubous and military vests"); the languages they spoke ("some of the assailants understood neither Bambara nor Tamashek"); the "Allah Akbar" (God is Great) pronounced throughout the attacks; and the sermons given to the kidnapped students on 18 January 2012 (with the assailants suggesting that they adapt their lives to the principles of the assailants' interpretation of Islam so as not to "burn in hell"). All of this suggests that the assailants were at least mostly composed of members of extremist armed groups.

169. Moreover, Iyad Ag Ghaly, the leader of Ansar Eddine, never denied that he was present in the locality of Aguelhok throughout the fighting and until 24 January 2012. His presence was confirmed by videos available online and by several witnesses interviewed by the Commission or by other credible sources.[286] Several witnesses, including the person concerned himself, confirmed that it was Iyad Ag Ghaly personally who gave the (identified) emissary called "Bird" the ultimatum for the Aguelhok soldiers. The Commission considers that the evidence before it allows it to confirm that Iyad Ag Ghaly

[283] Testimonies 471, paras. 76-77; and 506, paras. 11-17.

[284] See, in particular, the testimonies in the Government investigation report on Aguelhok, February 2012.

[285] FIDH-AMDH, War crimes in North Mali, July 2012, pp. 12-13 (testimony of LD).

[286] Testimony No. 433, para. 30; Jeune Afrique, Video - Mali: Iyad Ag Ghaly, le leader de Ansar Dine, se met en scène, 15 March 2012. Jeune Afrique, Iyad Ag Ghali: " Ansar dine ne connaît que le Mali et la charia ", 8 April 2012. Video of Sheik Iyad Ag Ghaly addressing jihadist fighters following the attack against the Aguelhok camp.

had control over the assailants who carried out the attack of 24 January 2012 and that most of the assailants were therefore fighters of extremist armed groups.[287] Sheikh Ag Aoussa, the second-in-command of Ansar Eddine, considered to be Iyad Ag Ghaly's right-hand man, also confirmed that he was present as a commander during the attack against the Aguelhok military camp on 24 January 2012.[288] That presence was confirmed by video footage showing him clearly on the scene at the time of the events, and by testimony gathered by the Commission.[289] The fact that Sheikh Ag Aoussa led the troops that carried out the attack on 24 January 2012 is further confirmation that the assailants were mainly fighters of extremist armed groups. The fact that some witnesses testified that other officials of AQIM had been seen on the scene also suggests the presence of AQIM commanders, although the Commission was not able to verify those testimonies to the required standard of proof. However, the proximity of the two groups at the time of the events suggests the presence of Ansar Eddine and AQIM fighters during the attack.

Judicial follow-up

170. On 21 February 2012, a special commission to investigate the crimes of Aguelhok, composed of seven members, all senior officers of the defence and security forces, and chaired by the Inspector General of Police, submitted its report to the President of the Republic after spending 10 days in Aguelhok and meeting with witnesses to the events.[290] On 13 July 2012, the Malian Government referred the case to the International Criminal Court (ICC), asking it to investigate inter alia "the summary executions of soldiers of the Malian Army.[291]

171. Despite requests made to the Malian Government by the United Nations Special Rapporteur on extrajudicial executions,[292] neither the Malian Government nor the International Criminal Court has provided any information on the status of investigations or prosecutions concerning the crimes committed in Aguelhok. On 6 December 2019, the Commission sent an official letter to the Malian authorities to enquire about the measures taken to investigate the crimes committed in Aguelhok on 24 January 2012 and to prosecute the perpetrators of those crimes.[293] As at the date of submission of this report, the Commission had not received a response.

[287] Testimony No. 459, paras. 22-24; Al Jazeera, Investigating 'massacre' of soldiers in Mali, 24 April 2013; See also Government investigation report on Aguelhok, February 2012, pp. 9, 15-16, 33, which describe how "Bird" delivered an ultimatum on 23 January 2012 from Iyad Ag Ghaly.

[288] Al Jazeera, Investigating 'massacre' of soldiers in Mali, 24 April 2013. The Commission chose to mention the names of Iyad Ag Ghaly and Sheikh Ag Aoussa because they have both publicly acknowledged their participation in the Aguelhok attack. In addition, Sheikh Ag Aoussa died in 2016.

[289] Video of the attack, confidential document.

[290] Government investigation report on Aguelhok, February 2012.

[291] Letter dated 13 July 2012 from the Minister of Justice and Keeper of the Seals on the referral of the situation in Mali to the International Criminal Court by the Government of Mali.

[292] United Nations human rights special procedures, Special Rapporteur on extrajudicial executions, Letter of 27 September 2012 addressed to the Government of Mali.

[293] Letter dated 6 December 2019 from the Commission addressed to the Attorney General, Bamako Court of Appeal; Another letter was issued on 12 May 2020.

ii. 22 February 2012 – Bombing by the Malian Armed Forces of the camp of the Kel-Essouk Tuareg tribe in the locality of Tin Kalouman[294]

172. On 22 February 2012, after more than a month of fighting between the Malian Armed Forces and the forces of MNLA and Ansar Eddine in Tessalit, and one month after the attack on the Aguelhok camp, two helicopters bombed a civilian camp for nomadic Tuaregs from the Kel-Essouk tribe in the locality of Tin Kalouman (also known as Inkididikoum), 35 kilometres east of the city of Kidal. That attack was part of a series of bombings in the Kidal region which began on 11 February 2012.

173. According to the testimonies collected by the Commission, the camp, which consisted of approximately 50 tents, housed about 250 people, including nomadic Tuareg marabouts from the Kel-Essouk tribe, women and children from their extended families, as well as many heads of livestock (camels and sheep).[295] On 22 February 2012, at around noon, a small civilian aircraft flew over the camp. The camp was then attacked, between 3 p.m. and 4 p.m., by two helicopters, which fired approximately 20 projectiles at the site.[296] An eyewitness to the events stated that he saw “large bombs which split into small fragments” and that he “found almost 120 of those small devices after the bombing”.[297] Another witness, who visited the camp just after the events, indicated that, although he was not able to count all the fragments, he personally counted “at least 40”.[298]

174. The Commission established that those strikes killed at least one girl (identified), whose age varied between 4 and 8 years depending on the testimony, and a woman approximately 80 years of age (identified). The strikes also injured at least seven people, including two women (identified) who were seriously wounded. One of them, a pregnant woman who received head injuries, allegedly lost her pregnancy as a result of the bombing. The bombing also killed many animals and caused other material damage.[299]

175. The Commission has not received any information indicating that members of armed groups were in or around the bombed camp.[300] Taking into account the identity of the victims (mainly women and girls), the presence of many women, children and animals at the camp and the lack of military vehicles in the vicinity, the Commission considers that there are reasonable grounds to believe that the helicopter pilots, who were able to fly over their target at low altitude, could not have been mistaken about the civilian nature of the target that they were attacking and that, therefore, the bombing constituted a deliberate attack on a civilian camp.

176. With regard to responsibility for the attack, several witnesses identified the two “black” helicopters as belonging to the Malian Army.[301] Indeed, the Commission notes that, at the time of the events, only the Malian Armed Forces seemed to have the aerial capabilities to carry out that type of

[294] Case No. CEI02.

[295] Testimonies Nos. 421, 415 and 306.

[296] Testimonies Nos. 421, 415 and 417.

[297] Testimony No. 421.

[298] Testimony No. 417.

[299] Testimonies Nos. 421, 415, 417 and 306; Confidential interview conducted by HRPD, MINUSMA; AI, Mali: Agenda for human rights in Mali, November 2013, p. 25.

[300] Testimony No. 306.

[301] Testimonies Nos. 415 and 421.

bombing. The information available to the Commission does not indicate that legal proceedings have been initiated as a result of this incident or that an investigation into the incident is under way.[302]

iii. 29 July 2012 – Stoning to death of an unmarried couple in Aguelhok attributable to Ansar Eddine[303]

177. After Aguelhok was captured by Ansar Eddine and AQIM on 24 January 2012, and after the Malian Army retreated from the regions of northern Mali at the end of March 2012, Ansar Eddine and its AQIM allies took control of the Aguelhok area until the city was recaptured by MNLA and the French forces of *Operation Serval* in early February 2013. The Commission documented the only case of stoning to death that came to its attention during the period in which the northern regions were controlled by armed extremist groups between 2012 and 2013.

178. Between 10 and 12 July 2012, the Islamic police of the armed group Ansar Eddine, which controlled Aguelhok at the time of the events, arrested a couple (identified) for violating the rules under their interpretation of Islamic law by living together and having children out of wedlock. A few days later, the couple was brought before a *qadi*, a traditional judge (unidentified) who had travelled to Mali from Mauritania, who ordered that they be stoned to death. The stoning was scheduled for Sunday, 29 July 2012. Members of the Islamic police of Ansar Eddine required the entire population of Aguelhok to close up shop in the days leading up to the execution of the sentence and to gather on Sunday, 29 July, at a place near the city's cemetery, to take part in the stoning. As instructed, on 29 July 2012, at around 7 a.m., a crowd of 200 to 300 people gathered near the city's cemetery while the two victims were taken by pick-up truck to the site of their execution. Two holes were dug side by side for the occasion. Each member of the crowd was then requested to throw stones at the man and woman until they died. A witness present on the day of the stoning explained: "The jihadists asked everyone to throw stones. Each person came forward, picked up a stone and threw it." Crowd members were individually required to throw stones at the couple while shouting "*Allah Akbar*" ('God is great')".[304] The stoning ended at around 11 a.m., when both victims died.[305]

179. According to the information collected by the Commission, at the time of the events, the locality of Aguelhok was under the control of a Tuareg, a former Colonel in the Malian Army (identified, died 2015), who had deserted the Army in 2006 and joined Ansar Eddine in early 2012. Based on the information collected, that man was present on the day of the stoning and supervised its execution.[306] The Mauritanian *qadi,* who could not be identified but who was likely conflated with, if not a member of, AQIM or Ansar Eddine, reportedly came to Aguelhok specifically to deliver the stoning sentence before returning to Mauritania.[307]

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[302] Note verbale dated 12 March 2020 from the Commission addressed to the Minister of Justice; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[303] Case No. CEI03.

[304] Testimony No. 435.

[305] Testimonies Nos. 435 and 487; Confidential document of HRPD, MINUSMA; See also United Nations, Letter dated 31 August 2012 from four special procedures mandate holders of the United Nations Human Rights Council to the President of the Republic of Mali concerning that case, AL G/SO 214 (33–27) G/SO 214 (53–24) G/SO 214 (89–15) MLI 2/2012; Le Monde, Nord-Mali: des islamistes tuent un couple non marié par lapidation, 30 July 2012.

[306] Testimony No. 445.

[307] Testimony No. 487; Confidential document of HRPD, MINUSMA;

180. On 31 August 2012, four special procedures mandate holders[308] of the United Nations Human Rights Council sent a letter to the President of the Republic of Mali requesting information on the investigations conducted and on the proceedings initiated against the alleged perpetrators of that stoning.[309] To the Commission's knowledge, that letter was never answered. On 6 December 2019 and 12 March 2020, the Commission also sent two notes verbales to the Malian judicial authorities requesting information on the steps taken to investigate the incident or prosecute the perpetrators.[310] As at the date of submission of this report, the Commission has received no reply concerning that case.

iv. 15–23 February 2013 – Ill-treatment, pillaging and alleged rape against the Arab population in the In-Khalil area attributable to MNLA[311]

181. After the Malian defence and security forces and the French forces of *Operation Serval* arrived in the Kidal region at the end of January and at the beginning of February 2013, the city of Kidal was recaptured by the French forces alone, which expressly requested the Malian defence and security forces to stop their advance. That situation put MNLA in a position to take control of the city of Kidal and to resume operations in the region. In February 2013, in the In-Khalil area on the Algerian border[312] near Tessalit, fierce tensions arose between members of the Idnane Tuareg community who were allies or members of MNLA and members of the Arab community. Those tensions and the abuses committed during those few days led to fighting between MNLA and the newly established MAA in In-Khalil on 23 February 2013. The locality of In-Khalil is located at the outlet of the Niger River by the Adrar des Ifoghas, on the border with Algeria. It is a strategic crossing point connecting Mali and Algeria and is also a centre for trade between the two countries.

15–16 February 2013 – Ill-treatment of Arab men in In-Khalil and systematic pillaging of the property of the population of In-Khalil

182. The Commission considers that there are grounds to believe that, on 15 February 2013, several dozen men of Arab origin from Mali, Niger and Mauritania residing in In-Khalil were arrested by members of the Idnane Tuareg community affiliated with MNLA. They were then exposed to the sun for an entire day, blindfolded and hands tied. At least two persons (identified) were reported to have been seriously injured.[313]

183. The following day, 16 February 2013, the same MNLA members systematically pillaged the property and shops (vehicles, money, livestock, shop merchandise) belonging to In-Khalil residents of

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[308] The Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Chair of the working group on the issue of discrimination against women in law and in practice, pursuant to resolutions 17/5, 16/23, 16/7 and 15/23 of the Human Rights Council.

[309] Letter dated 31 August 2012 addressed to the President of the Republic of Mali.

[310] Notes verbale dated 6 December 2019 from the Commission addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 from the Commission addressed to the Minister of Justice

[311] Case No. CEI4.

[312] The Commission has reasonable grounds to believe that the documented incidents took place on Malian territory.

[313] Confidential document of HRPD, MINUSMA; Testimonies Nos. 488 and 489.

Arab origin.[314] In March 2013, a commission of Arab notables stated that “100 4×4 cars, 70 trucks, stocks of merchandise, food and fuel, and herds of camelids and ruminants disappeared [during the pillaging], resulting in losses estimated by the commission of inquiry at 197,622,000,000 Algerian centimes.”[315] Those exact numbers could not be verified. According to a representative of MNLA, the vehicles were returned following the conclusion of a reconciliation agreement between the two communities.[316] However, two witnesses interviewed by the Commission stated that they had recovered only non-functional vehicle frames and that none of the victims of the pillaging had been compensated. According to those witnesses, the failure to pay compensation for the pillaging fuelled persistent resentment within the Arab community towards the Tuareg community.[317] The Commission believes that there are no legal proceedings under way concerning that incident.

17–18 February 2013 – Alleged rape of three women of Arab origin by MNLA members

184. The Commission encountered great difficulties in documenting cases of sexual violence against women in the Kidal region. Sexual violence is not only taboo in that region and in the rest of the country, but its very existence throughout the Kidal area, regardless of its nature or when it was committed, was denied by several of the Commission’s interlocutors, including female members of civil society in Kidal.[318] For this reason, the Commission was unable to fully investigate allegations of sexual violence in the area. Exceptionally, the Commission has decided to present an allegation that it considers to be serious and credible but that it was unable to verify independently, in order to show that a judicial investigation is necessary to establish the specific circumstances of that incident and to ensure that sexual violence in the Kidal area is among the priorities in the conduct of investigations and the combating of impunity.

185. According to information collected by the Human Rights and Protection Division of MINUSMA, on the night of 17 to 18 February 2013, in In-Khalil, three women (unidentified) from the Arab community were allegedly raped multiple times by multiple men affiliated with MNLA. The victims confided in a resource person interviewed by the Division. They allegedly stated that they had been tied up and laid on their backs on a barrel, blindfolded, and that they had each been raped multiple times during the night. Although the victims could not say whether they had been raped by one or more men, they reportedly stated that their attackers had arrived in eight vehicles containing seven men each. One of the women reportedly bled for two days after the rape and died on the third day due to lack of care in Algeria, where she had been taken by her family. The other two women also allegedly fled In-Khalil.[319]

186. The Commission asked MNLA for its position on that case and, more generally, whether it had conducted internal investigations and imposed any penalties in connection with the alleged rapes attributed to some of its members.[320] On 20 May 2020, at a meeting with CMA members including

[314] Confidential document of HRPD, MINUSMA; Testimonies Nos. 488 and 489.

[315] Nour Info, Mali: Des Arabes maliens comptent les dégâts et indexent les Idnanes, 30 March 2013.

[316] Testimony No. 511.

[317] Testimonies Nos. 488 and 489.

[318] Testimonies Nos. 440, 449, 414, 416, 431 and 433.

[319] Confidential document of HRPD, MINUSMA; See also Maliactu, Mali: un mouvement d’Arabes dit combattre des rebelles touareg dans le Nord, 23 February 2013; See also testimonies Nos. 488 and 489.

[320] Letter dated 8 May 2020 from the Commission addressed to the CMA point of contact.

MNLA, representatives of MNLA told the Commission that they were not aware of any such cases and that, in fact, there had been no women in the locality of In-Khalil in 2013.[321] According to the information available to the Commission, no investigation has been conducted into these allegations.

Discovery of manuscripts from Timbuktu in connection with the clashes in In-Khalil of 23 February 2013

187. On 22 February 2013, a suicide car bomb attack was carried out on an MNLA position in In-Khalil, killing three MNLA members and injuring four others. Adnane Abou Walid Al-Sahraoui, a member of MUJAO, claimed responsibility for the attack. The following day, 23 February 2013, clashes occurred between MNLA fighters and Arab fighters of MAA and MUJAO. According to an MAA leader who claimed to have attacked the locality of In-Khalil, the operation was launched in response to the abuses committed by MNLA against the Arab civilian population of In-Khalil between 15 and 17 February 2013. According to MNLA, the fighters who clashed with MNLA on 23 February 2013 were affiliated with MUJAO.[322] At the time of the events, the relationship between MUJAO and MAA (which many former MUJAO members later joined) was unclear, and some fighters claimed to be from both groups.[323]

188. One issue indirectly related to those clashes was brought to the Commission's attention. In a press release of 11 March 2013, MNLA stated that, "following a skirmish with terrorist groups in In-Khalil on 23 February 2013, it seized a vehicle containing three trunks full of manuscripts which were unmistakably from the Ahmed Baba Centre in Timbuktu". The group indicated that it would provide those manuscripts to any institution that could return them after confirming that they belonged to the Centre.[324] In a letter of 22 March 2013 addressed to the Director-General of UNESCO, MNLA officially informed the Director-General of the discovery and requested the organization's assistance in returning the manuscripts, of which MNLA had drawn up a specific list. According to the information collected, UNESCO has not responded to that request for assistance from MNLA. The Commission was unable to determine what happened to the manuscripts, which are currently no longer in the possession of MNLA.[325]

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[321] Testimony No. 536.

[322] MNLA, Press release, Communiqué No. 55: Evènements de In-Khallil, 24 February 2013.

[323] The French forces bombed the locality of In-Khalil on 23 February 2013. The Commission obtained the names of at least five men who were killed and of two others who were injured during the various clashes and bombings, all of whom are believed to be members of armed groups. Testimonies Nos. 511; 488; 489; See also RFI, Mali: la vengeance, base des combats entre MNLA et Mouvement arabe de l'Azawad?, 24 February 2013; See also Maliactu, Mali: un mouvement d'Arabes dit combattre des rebelles touareg dans le Nord, 23 February 2013.

[324] MNLA, Press release, Communiqué No. 57: Manuscrits de Tombouctou, 11 March 2013.

[325] Letter dated 22 March 2013 from MNLA addressed to the Director-General of UNESCO; List of manuscripts contained in three trunks seized from terrorists during a skirmish with MNLA forces on 23 February 2013 in In-Khalil and presumably belonging to the Ahmed Baba Centre in Timbuktu (listing 1,022 documents); Geneva Call, Culture under fire: armed non-State actors and cultural heritage in wartime, October 2018, p. 35; Interview with source No. 75.

v. 2 June 2013 – Arrest and expulsion from the city of Kidal of dark-skinned persons by MNLA[326]

189. At the end of January 2013, after the defence and security forces and the French forces of *Operation Serval* began rapidly advancing towards northern Mali, MNLA resumed its operations and announced that it had regained control of the city of Kidal and of a number of localities in the regions of Timbuktu, Gao and Kidal.[327] Eventually, the French forces entered the city of Kidal alone, and the city remained under the control of MNLA. The group then took over the city's administration.

190. On Sunday, 2 June 2013, MNLA arrested about 100 men suspected of being in the pay of the Government. After being questioned about their presence in Kidal, at least 24 of them were sent by truck to the city of Gao, where they arrived on 4 June after being stripped of their money and valuables.[328] The day after the arrests, several journalists accused MNLA of "hunting dark-skinned men".[329] The organization Human Rights Watch accused MNLA members of brutalizing some detainees and of stealing their property.[330] MNLA, which did not deny the arrests and expulsions to Gao, justified those acts on national security grounds. It further stated that the detainees had been suspected of working for extremist armed groups or for the Malian Army, and had been unable to justify their presence in the city of Kidal. However, MNLA denied that the operation had been aimed at a particular community, indicating that dark-skinned persons had not been specifically targeted.[331]

191. The Commission notes that, according to various sources, the individuals arrested, most of whom were civilians living and working in the city of Kidal, were indeed all "dark-skinned", and that none of them were members of the Tuareg community.[332] It also notes that those arrests were made in a climate of suspicion towards certain dark-skinned ethnic groups, in particular the Songhai community of Gao, which had been accused by MNLA of not having adequately supported the "Azawad" project. Given the proportion of dark-skinned persons arrested and the statements allegedly made by some MNLA members who were behind the arrests, it seems to be established that MNLA identified certain civilians living in Kidal as persons working for the Government.

2. Region of Timbuktu

192. The armed groups that started the conflict in 2012 (MNLA, Ansar Eddine and AQIM) seized Timbuktu on 1 April 2012 without meeting any real resistance from the Malian Armed Forces. An Arab militia (which on the same day became the Front de libération nationale de l'Azawad (FNLA)) and MNLA were the first to enter the city. Upon entering, they systematically pillaged all the buildings in

[326]Case No. CEI05.

[327]MNLA, Press release, Récupération des villes, 28 January 2013.

[328]Testimonies Nos. 475; 483 and 511; ORTM news report of 4 June 2013. See also MNLA, Press release, Communiqué relatif à l'expulsion des infiltrés maliens et aux relations de l'armée malienne avec les réseaux terroristes, 3 June 2013.

[329]Jeune Afrique, Mali: le MNLA accusé de faire "la chasse aux Noirs" à Kidal, 3 June 2013; L'Humanité, À Kidal, les populations noires prises pour cible, 4 June 2013.

[330]Human Rights Watch (HRW), Mali: New abuses by Tuareg rebels, soldiers, 7 June 2013.

[331]Testimony No. 511; MNLA, Press release, Communiqué relatif à l'expulsion des infiltrés maliens et aux relations de l'armée malienne avec les réseaux terroristes, 3 June 2013.

[332]Testimonies Nos. 475 and 483; ORTM news report of 4 June 2013. Testimony No. 511.

the city.[333] The next day, Ansar Eddine and AQIM troops, under the leadership of Iyad Ag Ghaly, Djamel Okacha, Abu Zeid and Mokhtar Belmokhtar, among others, expelled the MNLA fighters and took control of the city. As soon as they came to power, the extremist armed groups imposed their interpretation of Islamic law on the city's population. Ansar Eddine and AQIM maintained their control over Timbuktu for nearly ten months, while the MNLA forces withdrew to Mauritania and to other cities in the region.[334] On 28 January 2013, with the help of the French armed forces, the Malian Armed Forces regained control of the city of Timbuktu.[335]

i. April 2012 to January 2013 – Corporal punishment and execution ordered by the Islamic court of Ansar Eddine and AQIM in Timbuktu[336]

193. The extremist armed groups Ansar Eddine and AQIM controlled the city of Timbuktu from 1 or 2 April 2012 to 28 January 2013, when the city was recaptured by the Malian defence and security forces, with the assistance of the French forces of *Operation Serval*. During that period, those groups established a local administration comprising various entities whose responsibilities included maintaining security and policing the city (a security battalion, the Islamic police and the *Hisbah* morality police, which was responsible for imposing its understanding of public morality). An Islamic court was also established to apply its own interpretation of Islamic law. According to the rules thereunder, the sale and use of alcohol, cigarettes and drugs were formally prohibited; women were required to wear the Islamic veil, while men were required to wear trousers reaching above the ankle; and sex outside of marriage was criminalized. The sentences imposed included corporal punishment, such as flogging for smoking, drinking or engaging in sex outside of marriage.[337]

194. The Islamic court, presided over by an identified *qadi* (traditional judge),[338] considered itself competent to order corporal punishment such as flogging, amputation and the death penalty. Members of the city's security and police entities were responsible for enforcing such punishment.[339] The

[333] ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 70; FIDH-AMDH, War crimes in North Mali, p. 17; HRW, Mali: War crimes by northern rebels, 30 April 2012.

[334] FIDH, War crimes in North Mali, 2012, pp. 7, 9, 15–19; ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 70;

[335] United Nations, Report of the Secretary-General on the situation in Mali (S/2013/189), 26 March 2013, para. 16; Report of the Secretary-General on the situation in Mali (S/2013/338), 10 June 2013, para. 37; HRW, World Report 2014, January 2014.

[336] Case No. CEI06.

[337] Testimonies Nos. 549, paras. 12–13 and 343, para. 2; ICC, Public redacted version of the document containing the charges against Al Hassan, ICC-01/12-01/18-335-Conf-Corr, 11 May 2019, paras. 4–10; See also FIDH-AMDH, War crimes in North Mali, 2012; AI, Civilians bear the brunt of the conflict, 2012; HRW, Mali: War crimes by northern rebels, 30 April 2012; Le Nouvel Observateur, Mali: le groupe armé Ansar Dine renonce à cesser les hostilités, 3 January 2013; RFI, Revue de Presse Afrique, 9 May 2012; New York Times (NYT), In Timbuktu, harsh change under Islamists, 2 June 2012.

[338] Jeune Afrique, Mali: quand l'ancien juge islamique de Tombouctou au temps de l'occupation jihadiste se pose en homme de paix, 13 September 2019. ICC, Public redacted version of the document containing the charges against Al Hassan, ICC-01/12-01/18-335-Conf-Corr, 11 May 2019, paras. 115, 139, 241; ICC, Decision confirming the charges against Al Hassan of 13 November 2019, paras. 116, 417, 423–424, 476, 484.

[339] See, for example, ICC, Decision confirming the charges against Al Hassan of 13 November 2019, paras. 70, 74, 75, 92–100, 108–111, 115–122, 132–133.

Commission documented the following three emblematic cases in which convictions were handed down by the Islamic court in Timbuktu.[340]

Public flogging of a couple

195. On 19 June 2012, an (identified) couple consisting of a man approximately 23 years of age and an 18-year-old woman was arrested by members of the Ansar Eddine and AQIM Islamic police in the city of Timbuktu. The couple was accused of having had a child out of wedlock, an offence for which they were sentenced to two years' imprisonment followed by expulsion from the city. The following day, after being questioned at the Islamic police headquarters at Banque Malienne de Solidarité (BMS), located in the Yoboutao market district, the couple was sentenced to 100 lashes by a judge of the Islamic court in Timbuktu and was forced to sign marriage documents. The flogging was carried out in public on the Place Sankoré by four individuals (some of whom have been identified), who took turns whipping the couple.

196. In mid-2017, a criminal complaint and accompanying civil claim concerning those facts was filed with the senior investigating judge of the Regional Court of Timbuktu.[341] In February 2019, the prosecutor of the Timbuktu court presented a bill of indictment for war crimes to the investigating judge. However, after the jurisdiction of the Special Judicial Unit to Combat Terrorism and Transnational Organized Crime was expanded in July 2019 to include international crimes, the investigating judge relinquished jurisdiction over the case to the Special judicial unit.[342] The Unit has not provided the Commission with information on the status of those proceedings, despite having been specifically requested to do so.

Amputation of a young man's right hand

197. An (identified) Songhai man approximately 20 years of age, who was accused by armed groups of stealing a neighbour's property, spent several weeks in detention before being sentenced to amputation of his right hand by the Islamic court in Timbuktu on 12 September 2012. On 16 September 2012, after having been drugged and tied up, the man was taken to a square next to the Bouctou Hotel and had his right hand amputated with a machete in front of a large audience. He was then taken to the hospital, where he stayed for a few days before leaving the city of Timbuktu for good.[343]

[340] Some of the members of the Islamic court are identified in ICC, Decision confirming the charges against Al Hassan of 13 November 2019, para. 122.

[341] Testimonies of the two victims collected by an international NGO; FIDH-AMDH, War crimes in North Mali, p. 18; Testimony No. 339; Criminal complaint and accompanying civil claim, 19 May 2017; Confidential NGO document. The observations of the medical team that witnessed the flogging were reviewed by the Commission's medical examiner. See forensic analysis, 17 October 2019. See also Malijet, video: 100 lashes for an unmarried couple in Timbuktu, 24 June 2012.

[342] Transmission of information on the development of two cases in Timbuktu, 30 January 2020.

[343] Confidential document of HRPD, MINUSMA; Testimony No. 339; ICC, Decision confirming the charges in the Al Hassan case, paras. 311–313, 441, 835. See also, La Presse, Amputé au nom d'Allah, 30 January 2013; Envoyé spécial, La nouvelle vie de (…) le premier amputé des islamistes du nord Mali, 1 December 2012; AI, Mali, Civilians bear the brunt of the conflict, September 2012, pp. 7–8.

Execution of a Tuareg man

198. An (identified) Tuareg herder, who was a member of MNLA and later Ansar Eddine, turned himself in to the Islamic police two days after he had been accused of killing a fisherman from the Bozo community during an altercation over alleged damage to the fisherman's nets by the herder's cows. On 2 October 2012, the herder, who had been accused of murder and sentenced to death by the Islamic court in Timbuktu, was taken to a site near the Azalaï Hotel, in front of approximately 100 people. As the fisherman's family had refused to pardon him, at 5 p.m. members of Ansar Eddine and AQIM executed the herder by firing two bullets at him, since the first bullet, which had been fired at his chest, had not killed him instantly.[344]

Conclusion

199. With the exception of the above-mentioned cases, the Commission has received no other information regarding amputations and executions ordered by the Islamic court in the region of Timbuktu.[345] However, the above-mentioned flogging is only one example of the physical and psychological violence committed against the population by members of Ansar Eddine and AQIM. Such violence was primarily committed through the bodies established by these groups while they controlled the city of Timbuktu and its surrounding region, such as the Islamic police or the Islamic court, demonstrating the widespread nature of the abuses committed against the civilian population.[346]

200. In conclusion, the Commission finds that there are reasonable grounds to believe that members of the armed groups Ansar Eddine and AQIM (some of whom are identified in a confidential annex) carried out unlawful arrests, detentions and inflicted corporal punishment in public(floggings and amputations), and sentenced a man to death. Although legal proceedings concerning the above-mentioned flogging are under way, no witnesses have been heard and no one has been charged with that offence. Similarly, the Commission notes that no proceedings have been initiated by the Malian judicial authorities concerning the amputation and death sentence, although this information has long been in the public domain.

201. Lastly, the Commission notes that, between the end of June 2012 and July 2012, mausoleums in Timbuktu — important historical religious monuments — were destroyed by members of Ansar Eddine and AQIM. However, the Commission did not conduct specific investigations into those incidents as they have already been specifically addressed by ICC.[347]

[344] Testimonies Nos. 346, 339 and 549, para. 13; Confidential interview of HRPD, MINSUMA; France 24, Les islamistes d'Ansar Dine exécutent un des leurs à Tombouctou: "Pour eux, la charia s'applique à tous", 4 October 2012; Bamada.net, Exécution publique au nom de la Charia à Tombouctou, 9 December 2012; Maliweb, Nord du Mali: les islamistes exécutent à Tombouctou un homme accusé de meurtre, 2 October 2012.

[345] The Commission notes that some of the incidents that took place in Timbuktu during the reporting period, such as the documented amputation, are included in the *Al Hassan* case currently before ICC.

[346] See, for example, confidential documents of HRPD, MINUSMA; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 6 March 2015; ICC, Decision confirming the charges in the Al Hassan case, pp. 127–172, 204–226; See also France 24, Reporters "Mali: Tombouctou, ombre et lumière", 21 February 2013 (updated 7 March 2013), 2:20–2:45; CNDH, Annual report 2012, p. 23.

[347] Confidential document of HRPD, MINUSMA; ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and sentence, 27 September 2016, paras. 31–39.

ii. April 2012 to January 2013 - Rape and sexual violence by members of armed groups in the cercles of Timbuktu, Goundam, Niafunké and Diré[348]

202. In the course of its investigations, the Commission obtained credible and corroborating information attesting to the commission of rape and other acts of sexual violence in the Timbuktu region during the period when armed groups (Ansar Eddine, AQIM and MNLA) were in control of the region. In particular, the Commission obtained many accounts, some of them corroborated by other testimonies relating the same facts or by forensic findings, about the high number of cases of rape and other acts of sexual violence in the city and region of Timbuktu during that period. In all, the Commission was able to document 52 cases of rape (mainly gang rape), involving at least 65 girls and women between 12 and 75 years of age (including 10 identified girls) by armed men, in the cercles of Timbuktu, Goundam, Niafunké and Diré.[349] In this section of the report, the Commission makes a distinction between cases of rape, forced marriage and other acts of sexual violence attributable to members of Ansar Eddine and AQIM, and those attributable to MNLA.

203. The Commission notes, however, that these cases represent only some of the acts of sexual violence committed against girls and women during that period. A significant number of cases of rape could not be attributed to a particular armed group, owing to a lack of evidence or sufficient contextual elements.[350]

204. The Commission wishes to point out that it is extremely difficult to document sexual violence in a context such as that of northern Mali, where the victims are often stigmatized and the perpetrators rarely bothered. Given that context, the number of cases documented by the Commission does not necessarily represent the volume of cases of sexual violence that occurred during that period. For example, the Commission notes the account of one victim who, together with an unknown group of female students, was raped for two months by members of armed groups.[351]

Gang rape of women and girls by members of Ansar Eddine and AQIM in Timbuktu

205. The Commission documented in particular many cases of rape of women and girls by members of the Islamic police or the morality police of Timbuktu using the same modus operandi. Members of armed groups apprehended women or girls in their homes or on the street on the pretext that their clothing did not sufficiently cover their heads or bodies and therefore did not correspond to their

[348]Case No. CEI07.

[349]Testimonies Nos. 177/138, 182, 311, 257, 199, 149 and 147; Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also confidential document of HRPD, MINUSMA.

[350]See, for example, confidential documents of HRPD, MINUSMA; criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015. Some cases were not included in this report either because they did not have a sufficiently clear connection with the conflict or an armed group, or because they did not satisfy the necessary methodological requirements and standard of proof.

[351]Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015.

interpretation of Islamic law. The victims were then taken to locations in the city where they were locked up, beaten and raped, often by several men and repeatedly.[352]

206. For example, in April 2012, a 16-year-old girl, who was three months pregnant, was returning from the market in Timbuktu when she was taken to task by members of the Islamic police on the pretext that her clothing did not cover her sufficiently. She was taken to the BMS building, which the extremist armed groups controlling the city were using as a prison, where she heard several other women crying out for help. At nightfall, three men took turns raping her repeatedly. She was released the next day but had a miscarriage as a result of the rape.[353] The Commission also documented several similar cases where members of the morality police, led by a man (identified),[354]beat or raped women using the same modus operandi.[355] For example, in July 2012, while at home with her family, a 40-year-old woman was forcibly apprehended by a patrol of four armed men, members of the morality police, on the pretext that she was not covered sufficiently. She was taken to a building where other women were also sequestered. After evening prayer, the victim was taken to a room in the building where she was raped, first by the chief of the morality police,[356]then by two other men in succession. She was released the next day, but was barely able to walk because of her injuries.[357] A 16-year-old girl also testified that she had been arrested in front of her residence by the chief of the morality police and taken to a cell at the “police station”, where other girls about her age were sequestered. For three days, the victim was beaten and sexually abused. Two other women who shared a cell with her were allegedly raped.[358]

207. In the light of all the information obtained, the Commission considers that there are reasonable grounds to believe that, during the time that they were in control of the city of Timbuktu, members of Ansar Eddine and AQIM, under various pretexts, arrested at least 17 women and girls of the city, who were sequestered in improvised detention centres where they were beaten, raped and sexually abused.

Rape in the context of forced marriages by members of Ansar Eddine and AQIM in Timbuktu

208. The Commission also documented nine cases of rape of (identified) girls and women that took place in the city of Timbuktu in the context of "forced marriages". Members of Ansar Eddine and AQIM, sometimes with the consent of Islamic courts (which also had the power to order "divorces"), "married" women and girls with whom they had had sexual relations. Families of victims who opposed such marriages were threatened with death and in some cases received a dowry of some tens of

[352]Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also ICC, Decision confirming the charges against Al Hassan, pp. 266-302; FIDH-AMDH, Mali: Choosing justice in the face of crisis, 2017, pp. 30-32.

[353]See also confidential document of HRPD, MINUSMA. For a similar conclusion, see ICC, Decision confirming the charges against Al Hassan, 13 November 2019, para. 678.

[354]For a similar conclusion, see ICC, Decision confirming the charges against Al Hassan, 13 November 2019, para. 113.

[355]Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014; See also confidential document of HRPD, MINUSMA.

[356]See ICC, Decision confirming the charges against Al Hassan, 13 November 2019, para. 113.

[357]Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

[358]Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

thousands of CFA francs which was given to or thrown at the feet of the victim's father as the victim was being abducted to be forcibly "married".[359] The victims of those forced marriages were then sequestered alone or with other women and raped regularly for weeks or months at a time, by one or several men.

209. For example, the Commission obtained information about the case of a 15-year-old girl who reported how three men had threatened to kill her father when he refused their marriage proposal, forcing him to accept the proposal without even knowing the identity of the man her daughter was going to marry. The next day, a religious wedding was held at a place she did not know. The newly "married" victim was taken by four men to a house where other young women were also sequestered. Throughout the following month, the victim was raped by all three men, each one doing so on a different night. She regained her freedom when the extremist armed groups left the city, only to discover that she was pregnant.[360]

210. A young woman about 25 years of age told a similar story. She explained how, in the second half of 2012, members of the groups controlling the city of Timbuktu asked a member of her family to marry her, threatening to kill him if he refused. Sometime later, the "marriage" was celebrated with one of the members of the group, the family receiving 100,000 CFA francs as a dowry. The young woman was then taken to a house where other women were being held. The victim was raped daily, sometimes by her "husband" and sometimes by other men. She was also violently beaten one day when one of her family members attempted to rescue her. According to her, the many other women sequestered in the house were also beaten and raped. The victim and her fellow detainees were finally able to regain their freedom after the Malian and French armed forces took back the city at the end of January 2013. However, when she regained her freedom, she was several months pregnant as a result of the rapes.[361]

211. In the light of all the information obtained, the Commission considers that there are reasonable grounds to believe that, during the time that they were in control of the city of Timbuktu, members of Ansar Eddine and AQIM forcibly married at least nine women and girls, who were sequestered, beaten and sexually abused in the context of those forced marriages.

Gang rape by presumed members of MNLA in Bintagoungou and Timbuktu

212. The Commission also obtained several testimonies from women who had been raped in the Timbuktu region and whose accounts suggested that the perpetrators were probably members of MNLA. For example, the Commission heard the account of two women who said they had been walking around the commune of Bintagoungou (Goundam cercle) when they were apprehended by five armed men wearing turbans and uniforms similar to those of the Malian Army, but whom they suspected were

[359] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also confidential document of HRPD, MINUSMA; See also ICC, Decision confirming the charges against Al Hassan, 13 November 2019, para. 82, 555, 564-582, 584-627, 632-637.

[360] Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 6 March 2015.

[361] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 6 March 2015.

members of MNLA. The five men tied them up and raped them, abandoning them until they were untied by passers-by.[362]

213. The Commission also received information that a 14-year-old girl was kidnapped in Timbuktu in December 2012 by armed men presenting themselves as MNLA members who, under the influence of drugs, allegedly raped her, and then released her after committing their crime.[363]

214. The Commission asked MNLA whether any follow-up action had been taken in respect of the incidents involving its members, and more generally whether it had conducted internal investigations and applied any punishment in connection with the allegations of rape attributed to some of its fighters.[364] On 20 May 2020, at a meeting with members of CMA, the latter informed the Commission that it had not been made aware of any case involving members of MNLA during the period under review.[365]

Conclusion

215. In the light of the foregoing, the Commission considers that there are reasonable grounds to believe that members of the Ansar Eddine, AQIM and MNLA armed groups committed rape in the areas under their control, in the cercles of Timbuktu, Goundam, Niafunké and Diré.[366]

216. In particular, the Commission has reasonable grounds to believe that members of Ansar Eddine and AQIM (some of whom are identified in a confidential annex), in particular members of the Islamic police and the morality police, sequestered, beat and raped, individually or in groups, at least dozens of girls and women in the city of Timbuktu when they were in control of the city from 1 or 2 April 2012 to 28 January 2013. Those acts of rape took place either in the context of forced marriages between the girls and women of Timbuktu and members of extremist armed groups, or as part of the widespread practice of members of the Islamic police raping their victims while in sequestration.

217. The Commission notes that some of the victims of those rapes have filed suit in Malian courts. In particular, two class action complaints were filed with Malian investigating judges, with the support of civil society organizations, on 12 November 2014 and 6 March 2015. The Malian judicial authorities were unable to locate the second complaint. As of the date of submission of the present report, none of the cases of sexual violence committed by extremist armed groups during the period when they controlled Timbuktu have been brought to trial.[367]

[362] Testimonies Nos. 177, 138 and 182; See also confidential document of HRPD, MINUSMA.

[363] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

[364] Letter dated 8 May 2020 from the Commission addressed to the CMA point of contact.

[365] Testimony No. 536.

[366] Testimonies Nos. 177/138, 182, 311, 257, 199, 149 and 147; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also confidential document of HRPD, MINUSMA.

[367] FIDH-AMDH, Mali: Choosing justice in the face of crisis, 2017, p. 31; See also the section on the fight against impunity.

iii. January to February 2013 - Execution of 11 men arrested by soldiers of the Malian Armed Forces in Timbuktu[368]

218. As in other regions, the recapture of the cities in the region of Timbuktu by the Malian Armed Forces came with allegations of serious violations, particularly against Tuareg and Arab men suspected of supporting or collaborating with armed groups.[369]

219. The French and Malian forces took back the city of Timbuktu from extremist armed groups on 28 January 2013.[370] The fear of reprisals by the Malian Armed Forces against Tuareg and Arab communities conflated with armed groups caused most of the families of those communities to flee. Some of the few Arab families that decided to stay in Timbuktu[371]were indeed subjected to abuse. According to information obtained by the Commission, two Arab men (identified) were arrested by the Malian Armed Forces during the day of 28 January 2013. A few days later, their bodies were found under a dune near Timbuktu.[372]

220. On 14 February 2013, eight Arab men residing in the Arabadjou neighbourhood of Timbuktu and a man of Songhaï origin trying to prevent the arrest of one of them (all identified), were arrested by soldiers of the Malian Armed Forces and taken away in military vehicles. One of the Arab men had been interviewed by the French television channel 'France 24' the day before his arrest.[373] Two days later, the bodies of four of those men were found buried in two mass graves at the foot of a sand dune near the city.[374] The Commission's forensic doctor examined medical data from hospital sources concerning the discovery of the bodies two days after their disappearance and concluded that the post-mortem interval was at least 36 hours, thus supporting the contention that at least four of the missing men were killed within approximately 12 hours of their arrest.[375] The other men arrested that day have never seen again.

221. According to the information obtained by the Commission, the Malian authorities opened an investigation in 2013, following which between four and six soldiers were arrested and recalled from

[368]Case No. CEI08.

[369]Report of the Secretary-General on the situation in Mali (S/2013/189), 26 March 2013, para. 16; Report of the Secretary-General on the situation in Mali (S/2013/338), 10 June 2013, para. 37; HRW, World Report 2014, January 2014.

[370]Le Figaro, Les forces franco-maliennes entrent dans Tombouctou, 28 January 2013; French Ministry of Defence, *Operation Serval*: update of 28 January 2013.

[371]Confidential document of HRPD, MINUSMA; See also AP, Reporter's quest to find bodies ends in desert, 9 December 2013; France 24, Reporters "Mali: Tombouctou, ombre et lumière", 21 February 2013 (amended 7 March 2013).

[372]Confidential documents of HRPD, MINUSMA; See also AP, Reporter's quest to find bodies ends in desert, 9 December 2013; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 9-10; France 24, Reporters "Mali: Tombouctou, ombre et lumière", 21 February 2013 (amended 7 March 2013). AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 9-10.

[373]France 24, Reporters "Mali: Tombouctou, ombre et lumière", 21 February 2013 (amended 7 March 2013), 9:06-11:50.

[374]Confidential documents of HRPD, MINUSMA; Testimony of two family members of the victims to an international non-governmental organization; Testimonies Nos. 243 to 339; Forensic analysis, 10 October 2019. France 24, Reporters "Mali: Tombouctou, ombre et lumière", 21 February 2013 (amended 7 March 2013), 9:06-11:50; AP, Reporter's quest to find bodies ends in desert, 9 December 2013; Sahara médias, Ali Ould Kabbadi, 70-year-old Malian of Arab origin unjustly arrested in Timbuktu, 18 February 2013; Report of the Independent Expert on the situation of human rights in Mali (A/HRC/25/72), 10 January 2014, para. 49; HRW, Mali: Prosecute soldiers for abuses, 21 February 2013; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 8-10.

[375]Forensic analysis, 10 October 2019.

Timbuktu to Bamako. However, according to some reports, the soldiers recalled to Bamako were released a few weeks later.[376]

222. Faced with the inaction of the Malian authorities, relatives of the victims tried to refer the matter to the Malian judicial authorities on several occasions. For example, a complaint was filed on 4 March 2013 with the Bamako Attorney General, who had jurisdiction over those matters at the time. In 2017, a relative of a person who had disappeared also filed a criminal complaint and accompanying civil claim with the senior investigating judge of the Timbuktu Regional Court. Questioned about any follow-up action taken in respect of the complaint, the Malian judicial authorities informed the Commission that, in February 2019, the prosecutor presented a bill of indictment to the investigating judge for war crimes, but that following the amendment of the Code of Criminal Procedure in July 2019, the judge planned to relinquish jurisdiction over the case to the Special judicial unit.[377]

223. In conclusion, the Commission considers that there are reasonable grounds to believe that, in the days following the recapture of the city of Timbuktu by the Malian Armed Forces and the French forces, soldiers of the Malian Armed Forces (the names of the superiors of the alleged perpetrators are provided in a confidential annex) arrested and killed ten Arab men suspected on ethnic grounds of being associated with armed groups and one Songhaï man who had tried to prevent the arrests. The Commission also has reasonable grounds to believe that the Malian authorities are aware of the identity of the perpetrators (and their superiors) and that no legal action has been taken against them.[378]

iv. February to March 2013 - Abuse and torture of seven Tuareg men by soldiers of the Malian Armed Forces in Léré and Markala[379]

224. On 15 February 2013, the day of the cattle market in Léré (Niafunké cercle), soldiers of the Malian Armed Forces surrounded the market and arrested seven men (six Tuareg and one Bella Tuareg, all identified). According to several corroborating testimonies, the soldiers of the Malian Armed Forces beat them violently and took of all the money they had on them. One of the men lost consciousness after being dragged on the ground, while another, lost consciousness as well as vision in one eye after receiving violent blows from a rifle butt.[380] These conclusions are supported by forensic findings based on photographic documentation.[381]

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[376]A victim's interview with OHCHR; Testimonies Nos. 487 and 243; Maliweb.net, Disparus de Tombouctou: l'armée malienne pointée du doigt, 9 May 2013; See also AP, Reporter's quest to find bodies ends in desert, 9 December 2013.

[377]Transmission of information concerning two cases in Timbuktu, 30 January 2020.

[378]See, for example, note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Minister of Justice in respect of that case, to which no reply has been received; See also note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[379]Case No. CEI09.

[380]Confidential testimonies of HRPD, MINUSMA. The Commission is aware that some documents indicate that the seven individuals were arrested in early March 2013 (Maliactu.net, Léré : Arrestation de sept Maliens et d'un Somalien, 6 March 2013; Bamako Court of Appeal, Indictment order and remand to the Assize Court, 16 February 2016) but, considering the victims' testimonies, which include supporting photographs, and the testimony of another individual, the Commission finds that there are reasonable grounds to believe that the seven individuals were arrested on 15 February 2013, and that the reference to their arrest in early March may be based on the date of their transfer to Markala; Forensic analysis, 2 April 2020.

[381]Forensic analysis, 2 April 2020.

225. The seven men were then detained in Léré for 17 days, during which time they were violently beaten, threatened with death and subjected to racial slurs. According to corroborating information, two inmates were seen to have been injected on their arms with an unknown substance that caused serious injuries and burns to parts of their bodies.[382]

226. On 4 March 2013, the seven men were transferred, blindfolded - with their wrists and ankles bound - to Markala (cercle and region of Ségou), where they were photographed and presented to the press as members of armed groups arrested in possession of firearms.[383] The next day, they were taken to Bamako gendarmerie camp No. 1, where they were held for three weeks before being transferred to the Bamako remand prison. The Commission notes that one of those men later died at the prison as a result of those abuses and the conditions of detention.[384]

227. Finally charged with acts of terrorism and violation of the external security of the State, they were released and placed under judicial supervision, subject to the payment of sums of money, at the beginning of September 2013. They took advantage of the placement under judicial supervision to leave Bamako. According to court documents obtained by the Commission, on 16 February 2016, the Indictment Division of the Bamako Court of Appeal remanded the case to the Bamako Assize Court for trial. On 30 May 2018, the Assize Court tried some of the men in absentia, sentencing them to 20 years' imprisonment.[385]

228. In conclusion, the Commission finds that there are reasonable grounds to believe that, in February and March 2013, in Léré and then Markala, soldiers of the Malian Armed Forces mistreated and tortured seven detainees in their custody. One detainee died as a result of his injuries and the conditions of detention at the Bamako remand prison, while another remained permanently disfigured. The names of individuals may be able to provide information regarding the identity of the perpetrators are listed in a confidential annex. Based on the information available to the Commission, no legal proceedings have been brought against the soldiers of the Malian Armed Forces who committed those abuses.[386]

v. March to April 2013 - At least four men killed by soldiers of the Malian Armed Forces in Timbuktu[387]

229. Towards the end of March or early April 2013, soldiers of the Malian Armed Forces killed four or five Tuaregs (four identified) in a fruit and vegetable market in Timbuktu. The Commission notes that, according to its investigations, there are two different and irreconcilable versions of the explanation of those deaths. According to a first version, the individuals were executed by soldiers of the Malian Armed Forces, while another version has them being killed by "stray bullets" during an exchange of

[382] Confidential testimonies of HRPD, MINUSMA; HRW, Mali: Soldiers Torture Detainees in Léré, 26 March 2013; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p. 19; Forensic analysis, 2 April 2020.

[383] Confidential testimonies of HRPD, MINUSMA. See also Maliactu.net, Arrestation de sept Maliens et d'un Somalien, 6 March 2013; Bamako Court of Appeal, Indictment order and remand to the Assize Court, 16 February 2016 (according to which the individuals were arrested by the Malian Army, which was conducting patrols in the vicinity of Léré and based on information provided by the population).

[384] See case No. CEI38.

[385] Bamako Court of Appeal, Indictment order and remand to the Assize Court, 16 February 2016; Bamako Assize Court, Order of conviction in absentia, 30 May 2018.

[386] See also the note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice, which remains unanswered.

[387] Case No. CEI10.

fire between the Malian Armed Forces and armed groups, triggered the day before by a car bombing followed by fighting in the town. According to the latter version, a delegation from the Malian Army has offered its official apologies to two of the families of the victims concerned.[388]

230. In conclusion, the Commission finds that there are reasonable grounds to believe that soldiers of the Malian Armed Forces killed four or five people in late March or early April 2013, in Timbuktu. However, based on its standard of proof, the Commission could not specify whether those deaths were criminal in nature. A judicial inquiry is needed to elucidate the facts that led to the deaths. The names of individuals may be able to provide information regarding the identity of the perpetrators are provided in a confidential annex. Despite the Commission's various interviews with military command and official requests addressed to the Government of Mali, it has still not received specific information about the legal proceedings brought against the soldiers of the Malian Armed Forces who committed those abuses.[389]

vi. March 2012 to May 2013 - Allegations of abuses attributable to soldiers of the Malian Armed Forces and Ganda Koy in the cercles of Diré and Gourma Rharous[390]

231. The Commission also learned of many accusations of abuses committed by members of the Armed Forces, accompanied by members of pro-Government groups, against the Tuareg and Arab populations of the Timbuktu region, which it was not able to document in accordance with its standard of proof.

232. According to information provided to the Commission, on 11 March 2012, soldiers of the Malian Armed Forces, accompanied by members of Ganda Koy, went to the 10-household camp of Ibangalane (Diré cercle), grouped the men and women together, tied and beat them up using military boots and cords. They also allegedly stripped and humiliated some women naked in public.[391]

233. In early March 2013, two young Tuareg men returning from a market in Burkina Faso, passing through the commune of Gossi (Gourma Rharous cercle), reportedly had their throats slit by members of the pro-Government group Ganda Koy. Their bodies were found a few weeks later and two suspects were arrested for those acts. However, based on the information available to it, the Commission cannot establish that they were subsequently prosecuted.[392]

234. On 29 May 2013, when undertaking sweep operations following the recapture of Timbuktu, soldiers of the Malian Armed Forces allegedly arrested three (identified) Tuaregs in Hekia (commune of Gossi, cercle of Gourma Rharous), who have never been seen alive since their arrest.[393]

235. However, that information and the interviews that the Commission's investigators had with potential witnesses and other resource persons did not allow the Commission to confirm those events

[388] Testimony No. 346. Confidential document of HRPD, MINUSMA; AI, Mali: Preliminary Findings of a Four-Week Mission, 7 June 2013, p.10; AI, Agenda for human rights in Mali, November 2013, p. 15; See also confidential document of HRPD, MINUSMA.

[389] Note verbale dated 12 March 2020 addressed to the Minister of Justice; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[390] Case No. CEI11.

[391] Confidential document of HRPD, MINUSMA.

[392] Confidential document of HRPD, MINUSMA.

[393] Confidential document of HRPD, MINUSMA.

in accordance with its standard of proof. Nonetheless, it considers that the allegations should be thoroughly investigated by the Malian judicial authorities.

3. Region of Gao

236. Between January 2012 and June 2013, the city and region of Gao experienced several facets of the crisis. After Ménaka, which MNLA attacked on 17 January 2012, the city of Gao fell to the armed groups MNLA, Ansar Eddine, AQIM and MUJAO on 31 March 2012. On 6 April 2012, when the entire region was under the control of the armed groups, it was from Gao that MNLA unilaterally declared the independence of "Azawad". MNLA was nevertheless driven from the city of Gao by MUJAO at the end of June 2012 and from Ménaka in November 2012. MUJAO exercised sole control over those localities until the end of January 2013 and the failure of the attempted invasion of southern Mali. Between January and June 2013, the security operations carried out by the defence and security forces to regain control of the city and region of Gao led to a number of abuses.

i. 31 March 2012 - Beheading of a soldier of the Malian Armed Forces by members of armed groups in Gao[394]

237. The armed groups Ansar Eddine and MNLA took the city of Gao on 31 March 2012. While many soldiers of the Malian Armed Forces left the city upon the arrival of the armed groups, some of whose members were sometimes dressed as civilians, some members of the Malian Armed Forces, including an (identified) lieutenant, stayed behind to fight them. According to testimonies and information obtained by the Commission, the lieutenant was beheaded by members of the (unidentified) armed groups. However, the evidence obtained does not allow the Commission to conclude whether the lieutenant was beheaded after having been executed while he was hors de combat or whether he was beheaded after having been killed in combat while defending the city.[395] In addition, according to the information obtained, the victim's head was hung on the wall of the military camp, next to other heads.[396] The Commission has still not received specific information that would allow it to confirm whether the Malian authorities have initiated legal proceedings against the perpetrators in connection with those incidents.

ii. March-April 2012 - Pillaging of institutions afforded special protection under humanitarian law and of people's property in the city of Gao by members of MNLA, assisted by members of Ansar Eddine and MUJAO[397]

238. According to testimonies obtained by the Commission and other credible and corroborating sources, in the days following the capture of the city of Gao by MNLA and extremist armed groups (Ansar Eddine and MUJAO, supported by AQIM), members of MNLA pillaged the city extensively.

239. Of the places pillaged, the Commission documented the Christian Baptist Church (which was also completely ransacked, with its windows taken off and its library burned down), the Catholic

[394] Case No. CEI12.

[395] Testimonies Nos. 396, 525 and 185; FIDH-AMDH, War crimes in North Mali, July 2012, p.14.

[396] FIDH-AMDH, War crimes in North Mali, July 2012, p. 14; See also OHCHR, Letter from the Special Rapporteur on extrajudicial, summary and arbitrary executions et al., 27 September 2012, p.2.

[397] Case No. CEI13.

Church, the Gao Bible Institute (as well as the personal belongings of seminarians present at the Institute), the warehouses of the International Committee of the Red Cross (ICRC) and the World Food Programme (WFP), the pharmacies, private clinics, the Gao regional hospital (in particular theft of medicines, mattresses and beds), the Gao reference health centre, educational and vocational training institutions (such as the Ecole Sainte Geneviève and the Teacher Training Institute), banks, government offices and the residences of State officials.[398]

240. Beyond the financial considerations, the pillaging of health institutions led to a considerable humanitarian crisis. The pillaging of the Gao regional hospital, for example, triggered the departure of civil servants, leading to the death of some of the hospital's patients.[399] The pillaging of school facilities and equipment during the crisis had destructive effects on education that were subsequently exacerbated by the use of some schools as headquarters.[400]

241. In addition, the pillaging of churches, the Bible Institute and a Christian radio station, as well as the destruction of religious icons, were interpreted by the Christian residents of Gao as a threat, causing them to move from the region to the south of the country.[401]

242. In conclusion, the Commission considers that there are reasonable grounds to believe that, between late March and early April 2012, members of MNLA, sometimes assisted by members of Ansar Eddine and MUJAO, carried out widespread pillaging in the city of Gao,[402]including of medical, religious, charitable and educational institutions and the premises of humanitarian organizations. Apart from an affidavit prepared by a bailiff at the request of the Christian Baptist Church to establish the material damage which it suffered,[403] the Commission has still not received any information from the judicial authorities as to the status of any legal proceedings initiated concerning those events, despite the various pieces of correspondence addressed to the Attorney General of Bamako and the Ministry of Justice.[404]

[398]Testimonies Nos. 144, 387, 386, 224, 210, 194, 231 and 512; Bailiff's affidavit of 4 November 2014; Confidential documents of HRPD, MINUSMA; AFP, Nord du Mali: la ville de Gao ravagée après sa prise par des groupes armés, 11 April 2012 (0:08-0:28); FIDH-AMDH, War crimes in North Mali, July 2012, pp. 16-17; See also confidential document of HRPD, MINUSMA; OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para 21. Some of these sources reported that, in certain cases, people took advantage of the situation to also steal property; France 3 (19/20), Images de mutilations à Gao au Mali, 28 December 2012 (01:22-01:30).

[399]Testimony No. 194; Confidential document from a medical source; See also report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, paras 70-73; FIDH-AMDH, War crimes in North Mali, July 2012, p. 16; HRW, Mali conflict and aftermath: compendium of human rights watch reporting 2012-2017, 2017, p. 157.

[400]Testimony No. 210; See also testimony No. 222; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, paras. 65-68; UNESCO, Schools in northern Mali are barely functioning, concludes mission by UNESCO and Government of Mali, 19 November 2013. According to the testimonies obtained, apart from financial considerations, the aim of the pillaging was to eliminate the symbols of the Malian State in the north of Mali. Testimony No. 210; See also testimony No. 222.

[401]Testimony No. 144; Confidential document of HRPD, MINUSMA; HRW, Mali: War crimes by northern rebels, 30 April 2012; See also La Croix, Des chrétiens menacés à Gao, 4 April 2012.

[402]See report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, para. 19.

[403]Bailiff affidavit of 4 November 2014.

[404]Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

iii. 25 and 26 June 2012 - Murder of a municipal councillor of Gao followed by a demonstration in the city of Gao[405]

243. On the evening of 25 June 2012, a municipal councillor (identified) was killed by three bullets in the city of Gao.[406] According to several sources, he was killed by members of MNLA because he opposed their presence in Gao.[407] On the other hand, according to CMA sources, the victim was killed by members of MUJAO near the governorate, which was occupied at the time by MNLA, with the aim of blaming MNLA for the murder.[408] Considering that none of the sources was an eyewitness, it is not possible to decide, given the standard of proof adopted by the Commission, whether the victim was killed by members of MUJAO or by members of MNLA.[409]

244. According to two testimonies obtained by the Commission, the population used the opportunity of the municipal councillor's burial on 26 June 2012 to demonstrate against MNLA, the de facto occupant of the city, which they held responsible for the death. When the demonstrators arrived at the governorate, members of MNLA fired into the crowd, causing injuries.[410]

245. The next day, members of MUJAO sent a young Fulani man to find out what was happening around the governorate. According to a witness who was interviewed by the Commission, the young man was killed by members of MNLA occupying the governorate. A confrontation ensued between MUJAO, assisted by the people of the city, and MNLA,[411]which ended with MNLA leaving the city of Gao.[412]

246. In conclusion, the Commission finds that there are reasonable grounds to believe that a municipal councillor was shot and killed in Gao in the evening of 25 June 2012, and that the following day, members of MNLA fired on demonstrators, causing injuries. The Commission had asked the authorities

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[405] Case No. CEI14.

[406] Testimonies Nos. 406, 191, 370; 350, 194 and 445; Confidential document of HRPD, MINUSMA; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 10; See also, Maliactu, A propos de l'assassinat d'Idrissa Oumarou : L'ADR fortement indignée, 5 July 2012; Bamako.com, Mali : le gouvernement condamne le meurtre d'un élu à Gao, 27 June 2012.

[407] Testimonies 406, 191, 370, 350, 194 and 445; Confidential document of HRPD, MINUSMA.

[408] Testimonies Nos. 231 and 536.

[409] See also media reports that he was killed by bandits who wanted to steal his motorcycle: RFI, Gao : après la mort d'un élu local, la colère monte dans la ville, 26 June 2012 (modified on 27 June 2012); Bamako.com, Mali : le gouvernement condamne le meurtre d'un élu à Gao, 27 June 2012.

[410] Testimonies Nos. 386 and 370; See also RFI, Gao : après la mort d'un élu local, la colère monte dans la ville, 26 June 2012 (modified 27 June 2012); Maliactu, Nord Mali : 4 personnes tuées par balle par le MNLA à Gao, 26 June 2012; Bamako.com, Mali : le gouvernement condamne le meurtre d'un élu à Gao, 27 June 2012.

[411] Testimonies Nos. 370 and 350; See also testimony No. 194.

[412] Testimony No. 194; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 10; See also Le Figaro, La perte de Gao, "capitale" du Nord, montre l'usure du groupe laïc, 28 June 2012 (updated 29 June 2012).

to confirm whether judicial measures had been taken in that case, but had not received a reply by the date of submission of this report.[413]

iv. Late March to August 2012 - Threats and violence against media professionals by members of armed groups in Gao[414]

247. According to the information collected, as soon as the MNLA and MUJAO armed groups took control of the city of Gao, they exerted pressure on, threatened and physically attacked media professionals who refused to cooperate with them or who took positions that were unfavourable to them.[415] One witness told the Commission that he was threatened by a member of MNLA (identified) because he refused to read the armed group's messages over the radio in early April 2012.[416] Those threats did not stop until the group was forced to leave the city of Gao at the end of June 2012.

248. In addition, according to corroborated and consistent information and testimony obtained by the Commission, in early August 2012, during a radio interview between a journalist and a lawyer (both identified) who was explaining, by telephone, the illegality of the application of Islamic law by extremist armed groups, some members (identified) of MUJAO, a group that was at odds with the journalist for his remarks concerning their application of Islamic law, interrupted the programme. They arrested him and took him outside the city, where they beat him unconscious. They then took him to the hospital in Gao, where he was hospitalized for a while before leaving the region.[417] The Commission's forensic doctor concluded that the victim's injuries were consistent with his account of the events.[418]

249. In conclusion, the Commission considers that there are reasonable grounds to believe that members of MNLA (between the end of March and June 2012) and MUJAO (between the end of March and August 2012) threatened and used violence against media professionals, and that in early August 2012, a journalist was abducted and beaten unconscious by members of MUJAO (some identified in a confidential annex), including Aliou Mahamane Touré, head of the Islamic police of MUJAO at the time of the events. Although the latter was tried and sentenced by the Bamako Assize Court on 17 August 2018, it was not for the above-mentioned acts of violence for which he is the main suspect.[419]

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[413] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

[414] Case No. CEI15.

[415] Testimonies Nos. 442 and 525; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para 37; Courrier International, Mali. Bonjour ! Ici radio résistance…, 10 October 2012; CPJ, In Mali, rebels assault journalist, force station off the air, 19 September 2012; RSF, A Gao, bras de fer entre le Mujao et les derniers soldats de l'information, 8 August 2012.

[416] Testimony No. 442; Courrier International, Mali. Bonjour ! Ici radio résistance…, 10 October 2012;

[417] Testimonies Nos. 442, 194 and 525; Confidential document of HRPD, MINUSMA; RFI, Quand les jeunes de Gao se rebellent contre l'im-pitoyable loi des islamistes, 6 August 2012; TV5Monde, Les islamistes ont noyé des enfants à Gao, 11 August 2012 (00:00-01:00 ; 02:16-02:29); ORTM, Des nouvelles de Abdoul Malick Maiga, journaliste malien agressé à Gao par les islamistes, 12 August 2012 (added by Abmaco.com) (00:00-02:30); See also Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para. 37.

[418] Forensic analysis by the Commission's forensic doctor, 28 March 2019.

[419] See section below on the fight against impunity; *MP v. Aliou Mahamane Touré*, Indictment order and remand to the Assize Court, 28 March 2017; Assize Court of Bamako, *MP v. Aliou Mahamane Touré*, Conviction order of 18 August 2017; See also testimony No. 525. The

v. April to September 2012 - kidnapping of seven Algerian diplomats in Gao and execution of one of them attributable to MUJAO[420]

250. According to information published by international organizations considered credible by the Commission after analysis and corroborated by the media, in the morning of 5 April 2012, armed men belonging to MUJAO attacked the Algerian Consulate in Gao and abducted the consul, the vice-consul and five other Algerian diplomats, after replacing the Algerian flag on the building with the MUJAO flag. On 12 April 2012, as part of the negotiations with the Algerian Government during which it demanded, inter alia, the payment of a ransom of $15 million and the release of prisoners, MUJAO released three of those diplomats. On 2 September 2012, MUJAO demanded the execution of the vice-consul as retaliation for the arrest in Ghardaïa, Algeria on 15 August 2012 of three alleged members of AQIM by the Algerian authorities, who refused to release them. The consul died in custody as a result of a chronic illness. On 30 August 2014, the last two (identified) hostages of MUJAO were released near Bordj Badji Mokhtar (Adrar) on the border between Mali and Algeria.[421]

251. In conclusion, the Commission finds that there are reasonable grounds to believe that members of MUJAO held hostage seven Algerian diplomats in Gao for several months in April 2012, and that they executed the vice-consul in September 2012.

vi. April to December 2012 - Corporal punishment attributable to MUJAO in Gao and Ansongo[422]

252. Upon arriving in Gao in late March 2012, MUJAO imposed its interpretation of Islamic law on the population. Violations were generally penalized using corporal punishment, sometimes on the spot. On the basis of testimonies, reports, medical documents and other credible sources, the Commission documented several cases of individuals who suffered corporal punishment at the hands of MUJAO members, in particular flogging and amputation, because they had smoked a cigarette, failed to comply with the MUJAO dress code or were suspected of theft.[423]

253. According to one testimony received by the Commission, in early April 2012, a woman on her way home was beaten by MUJAO members around Gao market, apparently because she had not

Commission chose to mention his name publicly because he was convicted in court for his role as head of the Islamic police of MUJAO in Gao in 2012.

[420] Case No. CEI16.

[421] Confidential documents of HRPD, MINUSMA; AI, Agenda for human rights in Mali, November 2013, p. 37. HRW, Mali: Islamist armed groups spread fear in the North, 25 September 2012; RFI, Mali : le consul d'Algérie à Gao et six agents du consulat enlevés par un groupe armé, 4 April 2012 (amended 6 April 2012); RFI, Mali : deux diplomates algériens libérés par le MUJAO, 30 August 2014; Jeune Afrique, Nord-Mali : les djihadistes du Mujao libèrent trois des sept otages algériens, 12 July 2012; Le Matin d'Algérie, Tahar Touati, un des otages, exécuté par les tueurs du Mujao, 2 September 2012.

[422] Case No. CEI17.

[423] See, for example, testimonies Nos.158, 166, 533 and 210; HRW, Mali: Islamist armed groups spread fear in north, 25 September 2012; AI, Agenda for human rights in Mali, November 2013, p. 36; AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 6-7; France 3 (19/20), Images de mutilations à Gao au Mali, 28 December 2012 (00:00-01:14). See also confidential documents of HRPD, MINUSMA in relation to the abuses committed by Ansar Eddine.

covered her hair.[424] According to another witness interviewed by the Commission, in late April 2012, a MUJAO patrol took a man they had seen smoking a cigarette to the compound of Gao city hall (used by MUJAO as a prison). There, he was sentenced to 50 lashes, which were administered to his back as he knelt before a crowd.[425] An eyewitness reported another case of flogging to the Commission, involving a woman punished for giving birth to a child out of wedlock.[426] The Commission also heard the testimony of a man with a disability, a leg amputee, who had been slapped in front of his house in Gao in July 2012 by members of MUJAO on patrol because he was listening to music, a prohibited activity.[427]

254. In addition, according to corroborated information obtained by the Commission, MUJAO members (some of them identified) put into practice their interpretation of Islamic law on several occasions between August and December 2012 by amputating the limbs of a number of individuals whom they had found guilty of theft.[428] The Commission documented, for example, 10 (identified) victims of amputations performed by MUJAO in Gao. Some of the victims had had a hand or a foot amputated, while others had had both limbs amputated.[429]

255. An eyewitness described to the Commission an amputation that was carried out in public by an (identified) MUJAO member in early August 2012, at Place de l'indépendance in Ansongo. According to that witness, whose account was confirmed in an Amnesty International interview with the (identified) victim, the latter lost her right hand when a 10-member committee, headed by a MUJAO leader, found him guilty of theft in a swiftly rendered decision.[430]

256. Aliou Mahamane Touré, head of the Islamic police in Gao during the period in question, was arrested on 23 December 2013 and indicted on 28 March 2017.[431] The Assize Court of Bamako issued an order on 18 August 2017 finding him guilty of violation of the internal security of the State, criminal conspiracy, possession of military weapons and aggravated assault and sentencing him to 10 years' imprisonment.[432] The order seems to suggest that he was convicted of only some of the floggings and

[424]Testimony No. 188.

[425]Testimony No. 166; See also HRW, Islamist armed groups spread fear in north, 25 September 2012.

[426]Testimony No. 442.

[427]Testimony No. 163. Another witness told the Commission that, during the same period, two MUJAO members slapped him near the market because he was wearing a T-shirt bearing the flag of Mali, which he was then forced to remove. See testimony No. 165.

[428]See BFMTV, Mali : les amputés de Gao, 28 February 2013.

[429]Testimonies Nos.194, 229, 329, 210, 526, 512 and 215 ; See also Jeune Afrique, Nord-Mali : premières images des amputés de la charia, 15 September 2012; AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 7-8; AFP, Gao : cinq jeunes Maliens amputés sous la garde de djihadistes, 28 September 2012; France 3 (19/20), Images de mutilations à Gao au Mali, 28 December 2012 (01:30-02:19); France 2, A Gao, une victime raconte son amputation par les jihadistes, 29 January 2013; AFRIK.com, L'amputé de Gao, published 8 January 2013. The Commission also received reports that MUJAO members cut off a woman's ear for wearing a short skirt. See confidential document of HRPD, MINUSMA.

[430]Testimony No. 222; AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 6-7. See also BBC, Mali: amputation au nom de la Charia, 9 August 2012.

[431]*MP v. Aliou Mahamane Touré*, Proceedings of first court appearance, Investigating judge of the 8th Chamber of the Regional Court, commune No. III, 29 January 2014; See also Indictment order and remand to the Assize Court, 28 March 2017.

[432]*MP v. Aliou Mahamane Touré*, Conviction order of 18 August 2017.

amputations. To the Commission's knowledge, the Malian judicial authorities have not initiated any investigations of or prosecutions against the other perpetrators of the above-mentioned acts.[433]

257. In conclusion, the Commission finds that there are reasonable grounds to believe that members of MUJAO (some of whom are identified in a confidential annex) pursued a widespread policy of corporal punishment, such as flogging and amputation, in Gao and Ansongo during the period when the two cities were under the group's control.

vii. April 2012 to January 2013 - Recruitment of children by MUJAO, MNLA and Ansar Eddine in Gao[434]

258. According to many documents from international organizations that were reviewed by the Commission and which are corroborated by testimonies and media reports, the armed groups of MUJAO, Ansar Eddine and MNLA recruited children, either forcibly or in exchange for payment, following the capture of Gao in early April 2012.[435]

259. In early April 2012, for example, many children between the ages of 12 and 16 were observed holding guns in vehicles and trucks belonging to MNLA, MUJAO and Ansar Eddine, as well as at their checkpoints.[436] MUJAO was in fact recruiting children at a Qur'anic school, where they received religious instruction and learned how to use weapons. In late June 2012, children and other segments of the civilian population in Gao helped MUJAO to fight MNLA in Gao.[437]

260. Use of children, at least by MUJAO, continued until it lost control of the city. In late January 2013, for instance, four boys were found at the training centre of the MUJAO command post after their leader fled Gao.[438]

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[433] See section below on the fight against impunity. *MP v. Aliou Mahamane Touré*, Indictment order and remand to the Assize Court, 28 March 2017; Assize Court of Bamako, *MP v. Aliou Mahamane Touré*, Conviction order of 18 August 2017. See also testimony No. 525.

[434] Case No. CEI118.

[435] Confidential document of HRPD, MINUSMA; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2012, para. 29; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 23-25; See also report of the Secretary-General on children and armed conflict, (A/67/845*-S/2013/245*), 15 May 2013, paras. 91-92; Report of the Secretary-General on children and armed conflict (A/68/878-S/2014/339), 15 May 2014, paras. 100-101; CNDH, Annual report 2012, July 2013, p. 26.

[436] Confidential document of HRPD, MINUSMA; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2012, para. 29; CNDH, Annual report 2012, July 2013, p. 26; AI, Mali: Five months of crisis, May 2012, p. 20; See also FIDH-AMDH**,** War crimes in North Mali, December 2012, pp.16-17.

[437] Testimony No. 520. See also testimony No. 525; Report of the Secretary-General on children and armed conflict (A/68/878-S/2014/339), 15 May 2014, para. 101; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para. 29. Concerning the modus operandi of MUJAO, see also AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 23-25; AI, Mali. First assessment of the human rights situation after three-week conflict, 1 February 2013, p.12.

[438] Testimony No. 533; See also report of the Secretary-General on children and armed conflict (A/67/845*-S/2013/245*), 15 May 2013, para. 94.

261. Use of children was also evident outside the city of Gao. It was observed, for example, in Bourem (Bourem cercle) in the Ansar Eddine training camps,[439] and in Kadji (Gao cercle), where several children were recruited by MUJAO.[440] In addition, children who had been members of MUJAO in the Gao region since 2012 participated voluntarily or forcibly in the battle for Konna in the Mopti region, in which some lost their lives, in January 2013.[441]

262. In conclusion, the Commission finds that there are reasonable grounds to believe that the armed groups of MUJAO, MNLA and Ansar Eddine (whose commanders are identified in a confidential annex) recruited children between April 2012 and January 2013 in Gao and other localities in the region. Based on the information obtained by the Commission, the Malian authorities have not initiated any legal proceedings in respect of those events.

viii. February 2012 to February 2013 - Rape and sexual violence committed by members of MNLA and MUJAO[442]

263. The Commission heard testimony directly from rape victims and then collected credible and consistent documentation corroborating that testimony. In all, it documented 32 cases of rape (mainly gang rape), involving at least 47 girls and women between 11 and 48 years of age (including at least 20 girls, most of them identified), and 2 cases of attempted rape. The rapists were identified by the victims as members of MNLA in 10 cases and members of MUJAO in 11 cases, while in another case a member of Ansar Eddine was identified as the alleged perpetrator. In the remaining cases, the victims (especially those under 18 years of age) were unable to identify the group to which the alleged perpetrators belonged, but all were described as armed men.[443]

264. Most of the sexual violence documented took place while armed groups were in control of Gao, and occurred in Gao, Bourem and Ansongo.[444] In some of the cases documented, the victims were raped for days at a time; in others they were raped in their homes. For instance, one victim, a high school student at the time of the events in April or May 2012, told the Commission that she and her sister had been raped by several men she identified as MNLA members while their father was tied up and watched over by one of the rapists in the living room of their house in Gao.[445] The Commission asked MNLA whether follow-up action had been taken in respect of the incidents involving its members, and, more generally, whether it had conducted internal investigations into the alleged rapes attributed to some of

[439] Confidential document of HRPD, MINUSMA.

[440] AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.24.

[441] See below, case No. CEI28.

[442] Case No. CEI19.

[443] Testimonies Nos. 201, 189, 190, 187, 139, 176, 178, 179 and 197; Confidential document of HRPD, MINUSMA; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014. See also testimonies Nos. 164, 308 and 309; Confidential documents of HRPD, MINSUMA ; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, paras. 43-44 and 46; FIDH-AMDH, War crimes in North Mali, July 2012, pp.14-15; AI, Mali: Five months of crisis, May 2012, pp. 17-18.

[444] However, there were cases of rape in Gao in February 2012 and in February 2013.

[445] Testimony No. 201.

its fighters.[446] On 20 May 2020, CMA informed the Commission that, to its knowledge, no rapes had been committed by MNLA members during the period under review.[447]

265. Of the 11 cases attributed to MUJAO, one victim, aged 16, was raped by a member of MUJAO in the context of a forced marriage. Nine victims were attacked following their arrest, under different pretexts, by members of MUJAO and their Islamic police.[448] For example, one victim told the Commission that she and other women had been arrested at Gao market by "jihadists" and held for three days at Gao city hall, which was used by MUJAO as a prison. During their three days of detention, the women were given milk to drink every morning, which caused them to fall asleep immediately. They were then raped while asleep (a MUJAO practice, as confirmed by other sources). A few days later, the witness, who was a few months pregnant at the time, lost her pregnancy.[449]

266. In conclusion, the Commission considers that there are reasonable grounds to believe that members of MUJAO and MNLA kidnapped, beat and raped dozens of girls and women, some of them in an organized and systematic manner [450] and some for days at a time, in Gao, Bourem and Ansongo.

267. Despite the fact that a number of the victims were able to describe the rapists, and even name them in some cases, and that complaints have been filed,[451] the Commission notes that, based on the information at its disposal, no legal proceedings have been instituted in respect of those events.

ix. 18 January to 20 November 2012 - Sexual violence, pillaging, execution of a man and repression of a demonstration during the period when MNLA controlled the city of Ménaka[452]

268. The crisis in Mali began in Ménaka on 17 January 2012, when MNLA attacked the base of the Malian Armed Forces. The armed group, swiftly taking control of the city, remained there until 20 November 2012.[453] The Commission chose to document a number of incidents that took place in the city of Ménaka while it was under MNLA control. It received credible and reliable information concerning cases of rape and other forms of sexual violence, repeated pillaging and repression of

[446] Letter dated 8 May 2020 from the Commission addressed to the point of contact of CMA.

[447] Testimony No. 536.

[448] Testimonies 176, 187, 178, 179 and 197; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014; See also confidential document of HRPD, MINUSMA; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, para. 46.

[449] Testimony No. 187. Regarding the practice of using drugs for the purpose committing rape, see testimony No. 178; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

[450] See also report of the Secretary-General on the situation in Mali (S/2012/894), 28 November 2012, para, 23.

[451] Testimony No. 164; Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

[452] Case No. CEI20.

[453] Testimony No. 378; BBC, Mali: le Mujao prend Ménaka, 19 November 2012; Le Point, Nord du Mali: combats entre islamistes du Mujao et rebelles touareg du MNLA, 16 November 2012; MNLA, Press release No. 41-CTEA, 21 November 2012.

demonstrations during the period under consideration.[454] It also received other allegations, including in relation to a number of executions that may be attributable to MNLA or to unidentified armed men, but was unable to verify them independently.[455]

Sexual violence committed during the period when MNLA controlled the city of Ménaka

269. The Commission found it difficult to determine the exact number of victims of sexual violence committed between January and November 2012, when the city of Ménaka was under MNLA control. However, a local organization working on violence against women, which conducted investigations in 2012 while MNLA controlled Ménaka, collected testimonies supporting 15 cases of rape and 1 case of attempted rape involving a total of 21 victims that were committed between 18 January and 10 May 2012 in Ménaka commune alone.[456] The Commission was able to verify and validate the organization's documentation and methodology. In his report of March 2013 on sexual violence in conflict, the Secretary-General indicated that 21 cases of rape were recorded in September 2012 alone.[457]

270. In January 2012, just after MNLA took control of the locality, a 26-year-old Songhaï woman married to a soldier (identified) of the Malian Armed Forces was abducted from her home by two armed men. They took her to a house allegedly occupied by members of MNLA, where they raped her. At the time of the attack on Ménaka by MNLA in January 2012, a 25-year-old woman (identified) was raped in her home by two armed men, while a third man, who was also one of her neighbours, looked on. They were described as MNLA men. During the 2012 crisis, in neighbourhood No. 3 of Ménaka, next to the public school, two armed individuals on a motorcycle visited a woman several times, asking to marry her. On the third day, one of them raped her. He then came back and raped her every night for ten days. The attacker was described as "a Tuareg, a member of MNLA but not someone from the city of Ménaka". Prior to May 2012, an 18-year-old Songhaï girl was beaten and raped by two "light-skinned" Tamashek-speaking men aged 25 to 30. Another woman was raped by three armed men in her hut in the presence of her seven-year-old son, who was sleeping. One mother recounted the rape of her daughter, who had a mental disability, whom she found naked and being raped by a young man when she returned from the market. A widow, living alone in her house, was raped in her home for three

[454] Although the Commission's work was focused on 2012, it received at least two allegations that it did not independently verify concerning the rape of a mother and her two daughters aged 13 and 15 years by two unidentified individuals in the locality of Tilolamene in February 2014. According to information gathered by HPRD, MINUSMA, at that time MNLA controlled and patrolled the area (confidential document of HRPD, MINUSMA) and, during the first week of May 2013, the hospital in Mopti treated 10 cases of rape committed in Ménaka which, according to a medical source, had been perpetrated by members of MNLA (AI, Agenda for human rights in Mali, November 2013, p. 36).

[455] The unverified allegations received include: (1) the alleged execution in January 2012 of eight herders in Tin Fatimadata by two armed Tuareg individuals on motorcycles; (2) the alleged summary execution of a herder in Ménaka in May 2012 by two armed men on motorcycles to steal his cattle; (3) the alleged summary execution in September 2012 of a 54-year-old merchant, attributed to three MNLA members; (4) the killing at point-blank range in March 2013 of three young herders from Dougoumatene camp who were grazing their cattle by two people from the Daoussahak community, who, according to the family, had joined MNLA; Confidential documents of HRPD, MINUSMA.

[456] Confidential report of a local non-governmental organization, p. 13; Testimony No. 262.

[457] Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, paras. 52-53. See also AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p. 25.

months by armed men when the city fell into MNLA hands.[458] In the vast majority of documented cases, the victims were women and girls from the Bella and Songhaï Tuareg communities.[459]

271. Although many indicated that they believed the men were members of MNLA because of the group's presence in the city, most victims were unable to identify their attackers. The victims provided general descriptions of the perpetrators as "light-skinned men", "Tuareg MNLA fighters" and "light-skinned Tamashek-speaking men".[460] In view of those descriptions, the fact that several rapes took place when MNLA was taking control of the locality, and the fact that it is undisputed that MNLA was the only armed group controlling Ménaka at that time, there are reasonable grounds to believe that at least some of those rapes are attributable to MNLA members or to armed men who had demonstrated sufficient support for the group that they were able to carry weapons and operate freely in the city while it was under MNLA control.

272. The Commission obtained information that a man from Ménaka had allegedly complained to MNLA leaders in Gao about the rape of his daughter by two men he believed to be MNLA members. The leaders he met in Gao reportedly promised to investigate and impose penalties.[461] The Commission asked MNLA for its position on the cases mentioned.[462] On 20 May 2020, CMA informed the Commission that, to its knowledge, no rapes had been committed by MNLA members during the period under review.[463]

273. Many victims of the rapes described did not file complaints. Given that the city was controlled by the possible perpetrators of those crimes, and State authorities were absent, most of the women had limited opportunity to file a complaint.[464] However, other victims of rapes in the Ménaka region were among the 82 victims who filed a class action criminal complaint and accompanying civil claim with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014, with support from human rights organizations. While the Malian judicial authorities have heard some of the victims, to the Commission's knowledge, no suspects have been prosecuted and the victims have received no reparation.[465]

Pillaging attributable to MNLA members

274. According to corroborated information gathered from several sources, including witnesses interviewed by the Commission, MNLA members pillaged both public institutions and private homes upon their arrival in Ménaka. For example, MNLA members used the benches from Intitaniween school

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[458] Confidential report of a local non-governmental organization, pp. 13-14; Confidential documents of HRPD, MINUSMA; Confidential documents provided by civil society.

[459] Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, paras. 52-53; FIDH-AMDH, War crimes in North Mali, July 2012, p.15.

[460] Confidential report of a local civil society organization; Confidential documents of HRPD, MINUSMA; Confidential documents provided by civil society; Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, paras. 52-53.

[461] AI, Mali: Five months of crisis, May 2012, p. 18.

[462] Letter dated 8 May 2020 from the Commission addressed to the point of contact of CMA.

[463] Testimony No. 536.

[464] Testimony No. 262.

[465] Testimony No. 507, para. 21.; Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal.

as firewood and completely pillaged the school of Tabangout 1 and the public high school of Ménaka, which they also took over for their needs. The hospital and the reference health centre of Ménaka were also pillaged by MNLA in late January 2012.[466] In conclusion, the Commission finds that there are reasonable grounds to believe that, between late January and November 2012, while the city of Ménaka was under MNLA control, members of that armed group pillaged several health-care and educational institutions and private compounds. The Commission notes that, based on the information at its disposal, the Malian authorities have not initiated any investigations or legal proceedings in connection with those events.

November 2012 – 16-year-old boy killed and a number of demonstrators injured by MNLA members

275. On 4 November 2012, at approximately 7 p.m., a 16-year-old boy (identified) was killed in the city of Ménaka by an MNLA member, apparently for refusing to give him his telephone.[467] Alerted to the incident, young people in the city of Ménaka decided to protest against the insecurity they were experiencing.[468]

276. According to credible and consistent eyewitness accounts documented by the Commission and corroborated by other sources, on the morning of 5 November 2012, after the funeral of the young man killed the previous day, around 40 people gathered in neighbourhood No. 3 of the city of Ménaka to prepare for a demonstration, including by making signs bearing negative messages about MNLA. Dozens of other demonstrators joined the march along the way, which started in neighbourhood No. 3 and moved into neighbourhood No. 1, towards the gendarmerie, where armed gendarmes were waiting for them (some in civilian clothing and others in MNLA uniforms), who answered to MNLA at the time. A member of MNLA informed the demonstrators that the person responsible for the boy's death had been arrested and detained. The gendarmes refused to hand the suspect over to the crowd, which was demanding his execution.[469]

277. Part of the crowd continued to make its way to Ménaka 3 primary school, where they lowered and burned the MNLA flag. They then hoisted the Malian flag in its place as they sang the national anthem. At that point, a number of MNLA members opened fire, shooting into the air to disperse the crowd. Others shot at the demonstrators' feet and four people (all identified) sustained injuries to their lower limbs. Some of the wounded were taken to hospital by MNLA members.[470]

278. According to the information received, the family of the deceased, which did not file a complaint, later received a sum of money and a few bags of rice from MNLA by way of compensation in an out-of-court settlement.[471] Although the Commission was informed by CMA that those responsible for the young man's death had been arrested and held at the Ménaka gendarmerie station until the outbreak of

[466] Testimonies Nos. 540, 426, 541 and 424; Confidential OHCHR testimony; Confidential testimonies from civil society. See also testimony No. 541; HRW, Mali: War crimes by northern rebels, 30 April 2012.

[467] Testimonies Nos. 424 and 359; Confidential document of HRPD, MINUSMA.

[468] Testimonies Nos. 424, 359 and 462; Confidential documents of HRPD, MINUSMA.

[469] Testimonies Nos. 424, 359 and 462; Confidential documents of HRPD, MINUSMA.

[470] Testimonies Nos. 424, 359, 464, 463 and 462; Confidential documents of HRPD, MINUSMA.

[471] Testimonies Nos. 424 and 423.

the Tangaragabout conflict in 2013, it was unable to confirm their identities or whether legal proceedings had been initiated against them.[472]

279. In conclusion, the Commission finds that there are reasonable grounds to believe that a 16-year-old boy was killed on 4 November 2012 and that four demonstrators were shot and injured by MNLA members the following day. The Commission was unable to identify or obtain any information regarding national legal proceedings concerning the events described. It further notes that only one of the four injured individuals gave evidence before the TJRC and none of them filed a legal complaint.[473] The Commission notes that, based on the information at its disposal, the Malian authorities have not initiated any investigations or legal proceedings in connection with those events.

x. 20 November 2012 to January 2013 - Sexual violence, pillaging and corporal punishment perpetrated during the period when MUJAO controlled the city of Ménaka

280. On 20 November 2012, MUJAO took control of the city of Ménaka from MNLA and controlled it until January 2013, when the extremist armed groups failed in their advance into southern Mali and the defence and security forces and French forces of *Operation Serval* began to recapture the northern regions of Mali. The Commission documented several abuses attributable to MUJAO during the short time it controlled the city of Ménaka.

Sexual violence perpetrated during the period when MUJAO controlled the city of Menaka[474]

281. Shortly after MUJAO arrived in the city, at least three women of Tuareg origin (identified), including one Bella Tuareg, all in their fifties and living in the same neighbourhood, were sexually abused by armed men whom they did not know. Just after MUJAO arrived in the city, two armed men (unidentified) entered the compound of a woman who lived in neighbourhood No. 1 of Ménaka, while her husband was not home. The two men, whom the woman did not know, dragged her into the house. One man forced her to give him oral sex and the other forced her to have vaginal intercourse with him. The victim’s eight-year-old granddaughter witnessed the scene. A month later, two other men reportedly broke into her house and raped her again. On the same day as the first incident, in the same neighbourhood, two other women of Bella Tuareg origin living in the same compound were also raped by unidentified armed men.[475]

282. In view of the fact that the women did not know their attackers and the fact that those rapes took place when MUJAO arrived in the locality, there are reasonable grounds to believe that those rapes are attributable to MUJAO members or to armed men who had demonstrated sufficient support for the group that they were able to carry weapons and operate freely in the city while it was under MUJAO control.

November 2012 to January 2013 - Corporal punishment and pillaging by members of MUJAO in Ménaka [476]

[472] Testimony No. 502.

[473] Testimony No. 462.

[474] Case No. CEI21.

[475] Confidential questionnaire of HRPD, MINUSMA.

[476] Case No. CEI22.

283. While MUJAO controlled Ménaka, its members imposed their interpretation of Islamic law on the population.[477] According to information obtained by the Commission, several individuals were flogged as punishment for behaviour contrary to that interpretation of Islamic law.[478] One witness told the Commission that, a few days after the arrival of MUJAO, he saw a man who had been accused of theft being whipped in public at Ménaka market.[479] The Commission also received reports that several houses were pillaged by members of MUJAO; one victim explained that her house was ransacked because she was divorced.[480]

284. The Commission was also informed by an eyewitness that a Daoussahak merchant (identified) had been executed in 2013 by Fulani individuals suspected of belonging to MUJAO.[481] However, the incident could not be confirmed in accordance with the required standard of proof.[482]

285. In conclusion, the Commission considers that there are reasonable grounds to believe that, while the city of Ménaka was under MUJAO control between November 2012 and January 2013, corporal punishment was inflicted on the population and several houses were pillaged by members of MUJAO (some of the victims are identified in a confidential annex). The Commission notes that, based on the information at its disposal, the Malian authorities have not initiated any investigations or legal proceedings in connection with those events. Some victims of those crimes filed individual complaints with the support of the association "Cri du cœur". According to their lawyers, none of the victims who filed a complaint has been interviewed by a judicial authority to date.[483]

xi. January to May 2013 – Arrests, ill-treatment, torture and executions attributable to soldiers of the Malian Armed Forces in Gao[484]

286. Following the intervention of the French forces of *Operation Serval*, the Malian Armed Forces and the French forces reached the city of Gao during the night of 25/26 January. MUJAO abandoned the city the following night and it was retaken without resistance on 27 January 2013. In the weeks that followed, while some troops of the Malian Armed Forces and the French forces continued their advance towards the north of Mali, the Malian Armed Forces attempted to restore lasting control over Gao by conducting sweep and securement operations of the city, which was attacked several times by MUJAO members in February and March 2013.[485]

287. During that period, several human rights organizations reported abuses attributable to soldiers of the Malian Armed Forces, whose main victims were the population of Gao. Some of those abuses could be verified by the Commission.

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[477] Testimony No. 378; BBC, Mali: le Mujao prend Ménaka, 19 November 2012; Le Point, Nord du Mali: combats entre islamistes du Mujao et rebelles touareg du MNLA, 16 November 2012.

[478] Confidential testimonies provided by civil society.

[479] Testimony No. 378.

[480] Confidential testimonies from civil society.

[481] Testimony No. 428.

[482] Testimonies Nos. 540, 541 and 424.

[483] See the section on the fight against impunity.

[484] Case No. CEI123.

[485] Testimony No. 528. See also Le Figaro, Mali: les combats continuent à Gao, 22 February 2013; Le Monde Afrique, Au Mali, affrontements à Gao avec des combattants du Mujao, 24 March 2013.

Execution of at least four people in the city of Gao

288. The Commission was able to verify from several credible and reliable sources that, on 23 March 2013, while clashes continued between the Malian Armed Forces and MUJAO in Gao, an (identified) Gao resident who had gone out to buy cigarettes was stopped by three soldiers of the Malian Armed Forces guarding the Governor outside the Askia Hotel in Gao. At their request, the man first raised his hands and then turned back to go home when one of the soldiers of the Malian Armed Forces shot him in the upper back, killing him.[486] According to the information received, an altercation ensued between the shooter and another soldier who allegedly disapproved of the act, and a military vehicle came to pick up the shooter.[487] However, the various interviews conducted by the Commission with the military command of the Malian Armed Forces[488] did not yield specific information about any disciplinary sanction or legal proceedings initiated against the soldier.[489]

289. Furthermore, in the course of its investigations, the Commission received other similar allegations of executions in February and March 2013 in the city of Gao and in the village of In M'nass, near Djebock (Anchawadi commune) by soldiers of the Malian Armed Forces. Those showed that the extrajudicial execution of 23 March was not an isolated incident.[490] For example, according to the information received by the Commission, at least three other (identified) persons were executed by soldiers of the Malian Armed Forces on 23 March 2013 in the city of Gao.[491] The remains of two of the deceased were discovered in July 2013 on a plot of land belonging to an individual. They were buried

[486] Testimonies Nos. 410, 350 and 364 and the death certificate of the person concerned. Testimony No. 461. See also confidential document of HRPD, MINUSMA; and AI, Mali: Preliminary findings of a four-week mission, 7 June 2013.

[487] Testimonies Nos. 350 and 461.

[488] Testimony No. 528.

[489] According to testimonies Nos. 410 and 461, the family of the deceased did not file a complaint.

[490] According to AI and HRPD of MINUSMA, in early February 2013 an (identified) farmer from the Tuareg community was arrested by soldiers of the Malian Armed Forces while he was at the market. Gripped by fear and panic, he fled but was caught by civilians and handed over to the army. An (unidentified) soldier of the Malian Armed Forces then shot him in the back (see confidential document of HRPD, MINUSMA; and AI, Mali: Preliminary findings of a four-week mission, 7 June 2013). Around 12 February 2013, at least five civilians from the Bella Tuareg community (only one identified) reportedly went to the Wabaria cattle market to sell animals. They were reportedly arrested by soldiers as they left the market and were never seen alive again. Their bodies were discovered the next day by cattle herders not far from the Office of Radio and Television of Mali (ORTM) in Gao (see MNLA, preliminary report on human rights violations in Azawad; and testimony No. 350). In February 2013, one (identified) man reportedly died as a result of a gunshot wound inflicted by soldiers of the Malian Armed Forces. In addition, two (identified) men were allegedly injured by soldiers' gunshots on 15 March 2013 in the city of Gao (testimony No. 364 and confidential document from the witness). The Commission also collected similar allegations against soldiers of the Malian Armed Forces outside the city of Gao, but in the Gao region, over the same period. For example, in early March 2013, four (identified) cattle herders from the Tuareg community were allegedly executed by soldiers of the Malian Armed Forces, including members of the National Guard, in the village of In M'nass, near Djebock (Anchawadi commune). The four men, hearing gunshots, fled to take refuge in the house of a family living a camp adjoining the pond where they were with their cattle. The soldiers, including members of the National Guard, went there and arrested all those present in the house. The local residents were released but not the four Tuareg cattle herders. Their bodies were found a few days later (see confidential document of HRPD, MINUSMA; AI, Agenda for human Rights in Mali, November 2013; National Human Rights Commission annual report 2013, August 2014; and AI, Mali: Preliminary findings of a four-week mission, 7 June 2013).

[491] Testimony No. 364 and confidential document from the witness.

on 17 February 2016 at Gao cemetery under the supervision of the prosecutor of the Gao Regional Court.[492]

Mistreatment in the context of arrests and detentions

290. The Commission received credible information from HRDP of MINUSMA, corroborated by medical sources and photographs, that between January and the end of May 2013 soldiers of the Malian Armed Forces mistreated and tortured 13 persons (all identified, the youngest being 19 years old), suspected of belonging to and/or collaborating with MUJAO, in the context of the arrests and detentions carried out by the Malian Armed Forces in the city of Gao.[493]

291. For example, on 30 January 2013, an (identified) man was handed over by the people of Gao to the authorities for his alleged collaboration with MUJAO. He was beaten with rifle butts and truncheons and kicked while being held down by several soldiers. A soldier then cut off part of his left ear with a knife. The man also stated that he received electric shocks at the gendarmerie station in Gao and, after his transfer to Camp I of the gendarmerie in Bamako, during two interrogations at the General Directorate of State Security. In May 2013, he was transferred to the remand prison in Bamako and detained for illegal possession of a military weapon, rebellion, criminal association, participation in an insurrectional movement and violation of State security. On 13 June 2014, he was released after his case was closed. A photograph of the injuries to the victim's left ear was examined by the Commission's forensic doctor. He found the injuries consistent with the victim's version of events.[494]

Conclusion

292. The Commission considers that there are reasonable grounds to believe that soldiers of the Malian Armed Forces (whose chain of command at the time of the events is identified in a confidential annex) executed several individuals between February and March 2013, mainly in Gao. Between January and the end of May 2013, they also tortured or mistreated at least 13 individuals during their arrests and detentions.

293. Despite the Commission's various discussions with the military command of the Malian Armed Forces and official requests to the Government of Mali, it has still not received specific information about possible legal proceedings against the soldiers of the Malian Armed Forces who committed the abuses.[495]

[492] Testimony No. 364; and confidential document entitled "Exhumation report".

[493] Confidential documents of HRPD, MINUSMA; Document from a medical source.

[494] AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.16; Confidential document of HRPD, MINUSMA; Forensic analysis by the Commission's forensic doctor, 1 May 2020.

[495] The Commission requested information from the Government of Mali on existing legal proceedings involving the Malian Armed Forces but had not received a response at the time of submission of this report. Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission to the Minister of Justice.

xii. February to mid-March 2013 – Ill-treatment, torture and rape during the sweep operation of the Malian Armed Forces in Kadji Dar Es Salam[496]

294. Following the recapture of the city of Gao from MUJAO in January 2013 by the Malian defence and security forces and the French armed forces under *Operation Serval*, clashes with MUJAO continued for several weeks in the area. To dislodge the remaining members of MUJAO who were still active, the Malian Armed Forces launched *Operation Boa*.[497] The Kadji Dar Es Salam district in the village of Kadji (Gounzourey commune) was one of the villages suspected of collaborating with MUJAO, in that is was used as a base for MUJAO members to reach the city of Gao.[498] According to the information received, the village of Kadji, 15 km from Gao, includes the Kadji Dar Es Salam district, which is home to a community of Songhai following a strict version of Islam. In early June 2012, a large number of those residents joined and collaborated with MUJAO, which at the time controlled the area.[499]

295. On 28 February 2013, about a hundred soldiers of the Malian Armed Forces and the gendarmerie began an operation in search of MUJAO members and their weapons in Kadji Dar Es Salam, with the support of soldiers from the French forces of *Operation Serval*.[500] The latter did not intervene until 28 February 2013, while part of the Malian detachment remained in the area for nearly 13 days.[501]

Ill-treatment, torture and theft of property

296. According to the information collected by the Commission, between 60 and 70 men from the Kadji Dar Es Salam district were arrested by the defence and security forces on 28 February 2013 and the days that followed and taken to the Gao gendarmerie station. Through its investigations, including forensic analysis, the Commission was able to confirm the allegations of ill-treatment with respect to at least 10 persons who were arrested by soldiers of the Malian Armed Forces during the operations in Kadji Dar Es Salam or Gao.[502]

297. For example, a man from Kadji Dar Es Salam who was with his children in his canoe was arrested as soon as soldiers of the Malian Armed Forces arrived on the island. He explained that after he was arrested, the soldiers tied his hands behind his back with his own turban and asked him if he was in possession of rifles and ammunition. Faced with his negative response, the soldiers threw him to the

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[496]Case No. CEI24.

[497]Confidential mission report of HRPD, MINUSMA.

[498]AI, Mali: Preliminary findings of a four-week Mission, 7 June 2013, p.13; Testimony No. 370; Confidential document from a diplomatic source; See also Le Figaro, Mali: la chasse aux islamistes bat son plein à Gao, 1 March 2013.

[499]Testimonies Nos. 370 and 350; See also testimony No. 361; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.24; Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 43-44; Testimony No. 181.

[500]French Ministry of the Armed Forces, Press release, *Operation Serval:* sécurisation de l'île de Kadji dans la zone de Gao, 1 March 2013.

[501]French Ministry of the Armed Forces, Press release, *Operation Serval*: sécurisation de l'île de Kadji dans la zone de Gao, 1 March 2013; and testimony No. 370.

[502]AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.13; See also confidential document of HRPD, MINUSMA; Testimony No. 350 (60 men); Testimony No. 361 (73 men); Testimony No. 365; Testimony No. 362; Testimony No. 399 (26 people at one time); Testimony No. 370 (a total of 85 persons arrested); Testimony No. 394 (about 60 persons arrested); See also testimony No. 370 (who states that in his presence and that of other Kadji residents, none of the men from Kadji Dar Es Salam were mistreated by the Malian defence and security forces).

ground and hit him with their boots.[503] The next day, a local man reported being stopped by two soldiers of the Malian Armed Forces who were conducting house-to-house searches in the district. The witness said that he was beaten until he fell to the ground and then kicked by the soldiers until he lost consciousness. The witness, examined by the Commission's forensic doctor, spat blood for more than two years after the incident.[504] Another witness, accompanying by canoe his father and brother who had been summoned to the gendarmerie, recounted that they were stopped by 10 soldiers of the Malian Armed Forces in the middle of the Niger River and taken to the Wabaria bridge. The father and brother, who had been summoned to the gendarmerie, did not suffer any violence, while the witness was put on his stomach and the soldiers stepped on him and kicked him. He was then held at gun point, after being placed on his back and forced to look at the sun without closing his eyes. He said that he remained in that position for three hours and had suffered from vision problems in his right eye since then.[505] In addition, several witnesses stated that during the house-to-house search operations, valuables and money belonging to the owners were taken away by soldiers of the Malian Armed Forces.[506]

298. According to the information collected by the Commission, no military weapons were found by soldiers of the Malian Armed Forces during the searches.[507] The arrested persons were detained at the Gao gendarmerie station from 28 or 29 February 2013. Some were released on 5 March and others on 16 March 2013.[508] About 20 of them (some identified), including at least five (identified) boys who had reported to the gendarmerie, were transferred to Bamako after about a month's detention at the gendarmerie station in Gao.[509] One of them (identified) died on 4 April 2013 as a result of his injuries and the detention conditions at the remand prison in Bamako.[510] None of the people transferred from the Kadji Dar Es Salam district to Bamako were tried. They were gradually released after being brought before a judge following the investigations. The last five detainees of the operation were released at the start of 2015 following a plea to the political authorities by Kadji residents who came to Bamako.[511]

Rape of a woman by a soldier of the Malian Armed Forces

299. On 2 March 2013, when a significant number of men from the Kadji Dar Es Salam district had been arrested over the previous days, a soldier of the Malian Armed Forces from the National Guard

[503] Testimony No. 361.

[504] Testimony No. 365.

[505] Testimony No. 365.

[506] Testimonies Nos. 362 and 394; See also AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.13; Confidential document of HRPD, MINUSMA. One witness indicated, but this has not been verified, that Kadji residents also participated in the theft and destruction of property.

[507] Testimonies Nos. 370 and 394; See also RFI, Mali: une cinquantaine d'islamistes interpellés après l'opération de Kadji", 2 March 2013. According to a witness, weapons were found by the population in the following days and handed over to the authorities. See also testimony No. 370.

[508] Testimony No. 362.

[509] Testimonies Nos. 365, 409, 354, 360 and 370; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.13; and confidential documents of HRPD, MINUSMA.

[510] AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.19; Testimonies Nos. 370 and 365; See also case No. CEI38.

[511] Testimony No. 370. The Commission also received allegations, which it has been unable to confirm to date, regarding the disappearance of at least two (identified) men from Kadji Dar Es Salam following their arrests by the defence and security forces during that operation. It would appear that the disappearance took place at the time of the transfer of the detainees from Gao to Bamako. Testimonies Nos. 370 and 394. See also National Human Rights Commission annual report 2013, August 2014, p. 23.

took an (identified) woman and her baby into the woman's house under the pretext of conducting a search. The soldier then pushed the woman onto the bed and, at gunpoint, forced her to undress before raping her. The soldier's superior was quickly informed at the scene and became angry with the soldier.[512] The next day, the head of the Gao gendarmerie and an army Colonel-Major (identified) returned to Kadji Dar Es Salam. After an investigation, they arrested the soldier who had committed the rape. However, the Commission was informed by a credible witness within the defence and security forces undertaking the investigation that the case was not taken seriously in view of the prevailing security situation and the fact that the perpetrator was a solider of the Malian Armed Forces.[513]

Conclusion

300. The Commission considers that there are reasonable grounds to believe that during an operation conducted by soldiers of the Malian Armed Forces on the island of Kadji Dar Es Salam between late February and mid-March 2013, they mistreated several of the arrested men and stole property belonging to the population. Furthermore, a soldier of the Malian Armed Forces also raped a woman. The Commission was able to identify a number of officials of the Malian Armed Forces present at the time of the operation whose names are mentioned in a confidential annex. Despite the Commission's various discussions with the military command of the Malian Armed Forces and official requests to the Government of Mali, it has still not received specific information about possible legal proceedings against the soldiers of the Malian Armed Forces who committed the abuses.[514]

4. Region of Mopti

i. 19 February 2012 – Execution of the chief of the village of Hombori[515]

301. On 18 February 2012, at approximately 7.30 p.m., several (unidentified) armed men in several 4x4 vehicles arrived in the locality of Hombori, Douentza cercle. They went to the gendarmerie station where they took weapons, ransacked the premises and asked for the keys to the gendarmerie vehicle. They then went with a gendarme to the home of the traditional chief of the village of Hombori, a 78-year-old retired civil servant and a prominent figure in the Songhai community, who had the keys to the gendarmerie vehicle. A heated discussion ensued during which one of the assailants, described as a tall dark-skinned man wearing a turban (not otherwise identified), fired three shots at the village chief at close range, killing him.[516]

302. While the Government of Mali and MNLA accused each other of being responsible for that incident at the time of the events,[517] the Commission notes that a complaint was filed for accessory to

[512] See testimony No. 361; Confidential documents of HRPD, MINUSMA; Testimonies Nos. 358 and 370.

[513] Testimonies Nos. 526 and 370.

[514] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission to the Minister of Justice.

[515] Case No. CEI25.

[516] Testimony No. 379, para. 11; Confidential case report HRPD, MINUSMA; See also Jeune Afrique, Mali: les rebelles du MNLA frappent dans le Sud, 20 February 2012; and RFI, Mali: les habitants de Hombori réclament le droit d'assurer leur propre sécurité, 21 February 2012.

[517] After the incident, several members of the Government and the President of the Republic of Mali stated, without however providing any evidence, that MNLA was responsible for the execution of the village chief and the President of the Republic indicated that he was taking all steps to initiate proceedings in order to locate and arrest those responsible. In a press release, MNLA, also without providing any

murder against two (identified) Hombori gendarmes at the time, one of whom was the commander of the brigade.[518] On 21 January 2013, the Supreme Court appointed the District Court of commune No. III in Bamako district to investigate the case. Theoretically, an investigation into that case is therefore under way. However, the complaint could not be physically traced in the commune. The Commission also asked the Special judicial unit whether that complaint had been assigned to it, but had not received a response by the date the present report was submitted.[519] At this stage, as the complaint could not be located either by the Commission or by the Malian judicial authorities, it is unlikely that an active investigation is under way.

303. That case illustrates the power of the particularly virulent war propaganda between MNLA and the Malian Government at the start of the conflict. It demonstrates the difficulty of determining the perpetrators of violations and crimes in a context of armed conflict when no investigation was carried out at the time of the events by the authorities, despite their promises. It also reflects the importance of conducting prompt and impartial judicial investigations to ensure that war propaganda does not prevail over truth and justice.

ii. April 2012 – Summary executions of men from the Tuareg and Arab communities attributable to the Malian Armed Forces in Konna and Sévaré[520]

304. The Commission collected several allegations of executions and disappearances of civilians of Tuareg or Arab origin in April and July 2012 in Konna, Sévaré and Mopti, attributable to soldiers of the Malian Armed Forces.[521] The Commission notes here three incidents that it was able to confirm from two independent sources. On 2 April 2012, two (identified) gendarmes – one from the territorial brigade of Sévaré and the other from the river brigade of Mopti – plus an (unidentified) junior gendarme, all three Touareg, were arrested by soldiers of the Malian Armed Forces in the city of Sévaré. The three men were allegedly executed the same evening in the military camp of Sevaré.[522] On 17 April 2012, three unarmed individuals accused of collaborating with MNLA, including two (not otherwise identified) Tuareg, were reportedly summarily executed in Sévaré by a patrol of Malian Armed Forces after being exposed by the city residents.[523] On 22 April 2012, at a checkpoint in the locality of Konna,

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supporting evidence, claimed that “the chief of Hombori village was murdered by the Malian gendarmerie services in order to reinforce their campaign of disinformation and misinformation and to discredit our struggle”. According to people close to the village chief, the event was organized in such a way as to incriminate MNLA, but the act was allegedly ordered to prevent the village chief from testifying in a drug trafficking case that he was trying to denounce. (See communiqué from the Minister of Defence and Veterans Affairs, 19 February 2012; MNLA press release, Mise au point du MNLA sur les attaques de Youwarou, Hombori et Ténenkou, 20 February 2012; Canard Déchainé, Assassinat du chef de village de Hombori: le gouvernement accuse le MNLA - le MNLA pointe le doigt sur la gendarmerie, 21 February 2012; and confidential document of HRPD, MINUSMA).

[518] Supreme Court of Mali, Criminal Chamber, Order No. 4 of 21 January 2013, relinquishment and designation of jurisdiction.

[519] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako; Note verbale reminder dated 12 March 2020 addressed to the Minister of Justice of Mali.

[520] Case No. CEI26.

[521] Confidential document of HRPD, MINUSMA; Confidential testimonies collected by a human rights organization; testimony No. 453; CMA, Rapport préliminaire sur les violations des droits de l’homme dans l’Azawad, January 2012 to June 2014, p. 4.

[522] Testimonies Nos. 453 and 509; Confidential testimony collected by OHCHR; HRW, Mali: War crimes by northern rebels, 30 April 2012; Confidential report from a local human rights organization; See also CMA, Rapport préliminaire sur les violations des droits de l’homme dans l’Azawad, January 2012 to June 2014, p. 4.

[523] AI, Mali: Five months of crisis, May 2012, p.15; FIDH-AMDH, War crimes in North Mali, July 2012, p.21; Testimonies Nos. 260 and 453.

50 km north-east of Mopti, on the road between Gao and Bamako, soldiers of the Malian Armed Forces reportedly disembarked Tuareg passengers from a bus before ordering the bus to leave. The Tuareg passengers were allegedly mistreated by the soldiers in the presence of the other passengers. It is alleged but not verified that they disappeared or were summarily executed.[524] Following those incidents, the vast majority of Tuareg and Arab families living in the area fled to Burkina Faso and Mauritania.[525]

305. Despite the Commission's efforts, it proved very difficult to confirm those incidents with direct testimony and to determine the exact circumstances. The members of the Tuareg community present in the Mopti region at the time of the events, and whom the Commission's investigators were able to meet, clearly indicated that they were afraid to discuss the events of the period 2012–2013 so as not to put themselves or their families at risk.[526] The Commission also spoke with a credible source within the Malian authorities who stated that, on the basis of the testimonies received, it was clear that abuses had been committed against Tuaregs during that period. He indicated that investigations were not moving forward in those cases as they could endanger the lives of judicial personnel, since the investigations were likely to show the involvement of soldiers of the Malian Armed Forces still on active duty in the Mopti region or holding important positions at the national level. The source believes that the cases should be subject to independent judicial investigations, probably outside the Malian system, as they are of particular importance for ensuring lasting peace in Mali.[527]

306. The Commission also interviewed some military commanders identified as having been stationed in the area at the time of the events. They denied being present in Mopti at that time and stated that they did not know that extrajudicial executions had been committed against men from the Tuareg or Arab community.[528] The names of the officials of the Malian Armed Forces identified by the Commission as being in the area at the time of the events are set out in a confidential annex. The testimonies received and the fact that, even today, members of the Tuareg community in the Mopti region are still afraid of possible reprisals by the Malian Armed Forces reinforce the Commission's view that, in 2012–2013, pressure and threats were exerted on the witnesses to the events in the area by soldiers of the Malian Armed Forces.[529]

iii. April 2012 to January 2013 - Presence of children in the training camps of local self-defence groups based in Sévaré[530]

307. Local self-defence movements – including the three main ones in 2012, namely, Ganda Koy, Ganda Izo and FLN – each had a training camp in the city of Sévaré following their withdrawal from the northern regions at the end of March 2012. At the time, the number of recruits in those camps was

[524] HRW, Mali: War crimes by northern rebels, 30 April 2012; Extract from the database of HRPD, MINUSMA, confirming this report.

[525] Testimonies Nos. 314, 252, 509 and 535; HRW, Mali: War crimes by northern rebels, 30 April 2012. The Commission was itself able to establish the existence of a Tuareg village abandoned since 2012 on the outskirts of Sévaré.

[526] See, for example, testimonies Nos. 260, 252 and 509.

[527] Testimony No. 508.

[528] Testimonies Nos. 534 and 532.

[529] Testimony No. 252; Confidential testimony collected by OHCHR.

[530] Case No. CEI27.

estimated by OHCHR to be 1,800, 1,300 and 850, respectively.[531] Their stated objective was to help the defence and security forces regain control over the northern regions of Mali.

308. The Commission collected information showing that local self-defence groups recruited and trained children in those training camps in 2012. According to an Amnesty International investigation report, which the Commission was able to corroborate as reliable and credible, children were present among the recruits in all three camps in September 2012. AI, which visited the camps, was able to consult the FLN camp's register of recruits, which contained the names of 40 children born between 1995 and 1997, including at least two girls.[532] Leaders of the local self-defence movements, past and present, continue to deny that children are being recruited into their ranks.[533]

iv. 9 to 17 January 2013 – Clashes in the locality of Konna between Ansar Eddine, AQIM and MUJAO and the Malian defense and security forces and the French armed forces of *Operation Serval* [534]

309. In early January 2013, after Ansar Eddine withdrew from the peace talks, Ansar Eddine, AQIM and MUJAO launched a large-scale coordinated attack against southern Mali heading towards Mopti and Sévaré, in the region of Mopti, and towards Diabali, in the region of Ségou.[535] In the region of Mopti, the main clash took place in Konna, a locality about 50 kilometres north of Mopti and Sévaré. That battle, which was fought between Ansar Eddine, AQIM and MUJAO and the Malian and French armed forces, began on 9 January 2013 and ended on 17 January 2013. The three armed groups launched the offensive on 9 January, but the clashes in Konna did not begin until the morning of 10 January. The armed groups then attacked from three different points and, after several hours of fighting, at around 5 p.m., took control of Konna. The Malian Armed Forces were then forced to retreat. The armed groups took up positions in a number of strategic locations, including the fishing wharf, military and administrative buildings, the sub-prefecture building and the gendarmerie station. The Transitional Government urgently requested military aid from France, which responded favourably. On Friday, 11 January 2013, the French armed forces launched *Operation Serval*. That same day, the Malian and French armed forces launched a counter-attack on Konna, stopping the imminent advance of the extremist armed groups, which had expressed their intention to come to Sévaré for the Friday prayer. On the night of 11 to 12 January, French aircraft (Mirage 2000) bombed the positions of the extremist armed groups in the locality of Konna. After several days of clashes, the Malian and French forces

[531] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013; Jeune Afrique, Mali: aux armes les citoyens, 8 August 2012.

[532] AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 10-12; Report of the Secretary-General on children and armed conflict (A/67/845-S/2013/245), 15 May 2013, para. 93; HRW, World Report 2013, 18 January 2013; Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 30 and 49-50; Meeting with source No. 93.

[533] RFI, Mali: AI dénonce la détention d'enfants soldats, 14 June 2013; Meeting with source No. 85; See also testimony No. 240. It should also be noted that there is no evidence that the children present in those training camps in 2012 participated in the clashes and the Commission recalls that despite a request for assistance from the Malian Armed Forces in January 2013, after the withdrawal from Konna, the three local self-defence groups did not participate in the retaking of Konna with the French and Malian forces. Testimonies Nos. 240 and 294.

[534] Case No. CEI28.

[535] See case No. CEI33.

regained full control of Konna on 17 January 2013. A significant part of the locality of Konna was destroyed as a result of those clashes, whose vestiges still remain to this day.[536]

Helicopter bombing of 11 January 2013 of the locality of Konna

310. The Commission interviewed several witnesses who stated that, on 11 January 2013, at around 9 or 10 a.m., two helicopters had launched an attack and that, in particular, one of them had bombed a house located not far from the Konna roundabout, killing a 40-year-old woman and her three children, aged 6, 10 and 11 (identified).[537] A family member of the victims explained to the Commission that, at about 9 a.m. that morning, on his way to his farm, he had heard a helicopter firing and dropping bombs, and had therefore turned around. He then saw that the bombs had struck a house, partially destroying the house and instantly killing the woman and her three children in the compound after they had tried to take refuge in the house. He stated that he had counted approximately 14 bomb fragments on the property surrounding the house where the woman and her three children had been killed.[538] Those fragments were later collected by the French armed forces. The bombing also killed another man (identified) and injured several people near the roundabout.[539]

311. The testimony of a man on Radio France Internationale (RFI) at 11:45 a.m. that day about an exchange of fire between two helicopters and armed groups earlier that morning, as well as the reliable testimonies of the people present that day in Konna who were interviewed by Commission investigators, leave little doubt that two helicopters were used in an attack on the morning of 11 January 2013.[540] The information collected indicates that there were no members of armed groups in the house or in the mosque just behind the house which had also been struck, and that members of armed groups were more than 150 metres away, at the roundabout at the entrance to the locality of Konna.[541]

312. There are contradictory accounts concerning the two helicopters that were used in the attack on the morning of 11 January 2013, in particular regarding whether they were MI-24 helicopters belonging to the Malian Armed Forces or Gazelle helicopters belonging to the French Army.[542] The information collected by the Commission during its investigations supports the hypothesis that MI-24 helicopters belonging to the Malian Armed Forces were not used in the attack on Konna on 11 January 2013. A commander from the Malian Armed Forces who had taken part in the recapture of Konna and who had been present at Sévaré Airport on 11 January 2013 told the Commission that the French forces had arrived in Sévaré on the afternoon of 10 January 2013, and that operations had begun on the morning of 11 January 2013. He claimed that the Malian helicopters had not been used in the attack on 11 January

[536] See the section on the main actors involved in the conflict; See testimonies Nos. 532, 280, 283, 328, 250 and 325; See also Jeune Afrique, Mali: Retour sur la bataille décisive de Konna, 30 January 2014.

[537] Testimonies Nos. 327, 250, 325, 249 and 269; AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, p. 5.

[538] Testimony No. 264; See also episode of the French television programme *Cellule de crise* of 9 June 2017, 26:00–27:22.

[539] Testimonies Nos. 327 and 250; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013.

[540] RFI, Mali: retour sur les évènements de la journée du 11 janvier, 11 January 2013; Testimonies Nos. 328, 264, 327 and 250.

[541] Testimonies Nos. 264 and 325.

[542] The accounts circulating in the public domain are that the MI-24 helicopters were not operational or were operational but were not used in Konna that day, or, conversely, that they were used to attack Konna on the morning of 11 January 2013 from Sévaré Airport with the support of the French special forces, which were already in Sévaré. See testimonies Nos. 267 and 532; See also testimony No. 294; Jeune Afrique, Mali: Retour sur la bataille décisive de Konna, 30 January 2014; Jean Christophe Notin, La guerre de la France au Mali, p. 124.

2013. The two Malian helicopters did arrive in Sévaré in the morning and, although there had been plans to use them to fly over the area with the French, such an operation was considered too dangerous for the type of helicopter used by the Malian Armed Forces. According to the commander, the two French helicopters were the only helicopters used in the attack that day.[543] In addition, one witness said that a "white" man was flying the helicopter that had been used in the bombing of the house where the woman and her three children had died. Several residents of Konna were also convinced that the only helicopters that had been used in the attack on 11 January 2013 had been French Army helicopters.[544]

313. The official positions of Mali and France on that bombing seem to be difficult to reconcile. Since 2013, the official position of France has been that the French intervention began on 11 January at 4 p.m. with a helicopter raid aimed at stopping the advance of a column of fighters towards Konna. That operation resulted in the destruction of four vehicles belonging to the armed groups and was carried out using two Gazelle helicopters belonging to the Fourth Helicopter Regiment of the French special forces.[545] In 2013, the Minister of Defence of Mali indicated that the Malian and French forces had carried out a joint operation on the morning of 11 January in Konna, and, without elaborating further, acknowledged that there had been "collateral damage".[546]

314. In conclusion, there are reasonable grounds to believe that, on the morning of 11 January 2013, a helicopter was used to bomb a house located more than 150 metres from the Konna roundabout, where members of extremist armed groups were positioned, killing a 40-year-old woman and her three children, aged 6, 10 and 11, in their compound. The bombing also killed another man (identified) and injured multiple people near the roundabout. While noting the contradictory positions of the French and Malian authorities, the Commission nevertheless considers, in view of the information in its possession, that there are reasonable grounds to believe that only French Gazelle helicopters were used in the attack on the locality of Konna on 11 January 2013.

315. The Commission notes that, in October 2013, the owner of the bombed house where the woman and her three children died on the morning of 11 January 2013 filed a claim for damages against the French for the destruction of his house, property and livestock. The claim did not relate to the deaths but rather only to the material damage caused. The preliminary investigation conducted in response to the claim highlighted the agreement between the Governments of France and Mali on the status of *Operation Serval*, which provided that Mali was to pay compensation for damage to property or to persons, including when the damage was caused by *Operation Serval*.[547] The claimant subsequently

[543] Testimony No. 532.

[544] Testimony No. 264; See also episode of the French television programme *Cellule de crise* of 9 June 2017, 26:00–27:22. Testimonies Nos. 328, 250, 325, 249.

[545] Confidential diplomatic document; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013.

[546] AI, Mali: Preliminary findings of a four-week mission, 7 June 2013; See also letter dated 21 May 2020 from the Commission addressed to the Minister of Defence and Veterans Affairs on the position of the Government of Mali regarding the timeline of the fighting in Konna on 11 January 2013 (unanswered as at the date of submission of the present report).

[547] Confidential court documents. An agreement between the Governments of France and Mali in the form of letters signed on 7 and 8 March 2013 in Bamako, determining the status of *Operation Serval*. This agreement is set forth in Decree No. 2013-364 of 29 April 2013, which was published in the Official Gazette of France of 30 April 2013. See also information report No. 794 on behalf of the Foreign Affairs, Defence and Armed Forces Committee on the results of foreign operations, 13 July 2016, pp. 49–50. Among other provisions concerning activities conducted under *Operation Serval* on Malian territory, the agreement provides that "Mali shall pay compensation for damage

filed a claim with the President of the Court of First Instance of Mopti for compensation for the damage caused, and was told that his claim fell within the scope of the Compensation of Victims of the Rebellion of 17 January 2012 and of the Insurrection of 22 March 2012 Act.[548] To date, none of the victims of Konna seem to have received compensation under that law.

Other victims of the clashes in the locality of Konna

316. In addition to the heavy losses inflicted on the Malian Army on 10 January 2013, according to the testimonies collected, some soldiers were executed after being wounded, and the bodies of some of them were allegedly defiled by members of the extremist armed groups.[549]

317. Based on the testimonies collected in Konna, including those from the victims' association, the Commission identified at least 67 people who claimed to be direct or indirect victims of the incidents in Konna. Some of them had lost relatives or property, while others had been injured.[550] At least 10 civilians living in Konna, including children, were injured or killed in connection with the clashes in Konna and in the subsequent bombings by stray bullets and explosive devices, and it was impossible to determine from which side the bullets had been fired. For example, on 10 January 2013, two men (identified) were hit by stray bullets in the city centre. One of them died instantly and the other died five days later due to lack of care. Several Konna residents suffered significant material damage due to the destruction of their homes and/or the loss of their herds.

Use of children in the battle for Konna by MUJAO, Ansar Eddine and AQIM

318. The information and testimonies collected by the Commission confirmed the specific and credible allegations by Human Rights Watch that children, some under the age of 15, participated in the battle for Konna as members of Ansar Eddine, MUJAO and AQIM. For example, one witness interviewed by the Commission explained that he had seen four children whom he believed to be no more than 14 or 15 years old on the afternoon of 10 January 2013, when the extremist armed groups had entered the locality. He added that, among the four children, "there [had been] one small child who

caused to the property or person of third parties, including where France is partly responsible for such damage. Where legal action is taken in response to such damage, Mali shall be substituted for France as the defendant in the proceedings" (article 9 of Decree No. 2013-364 of 29 April 2013).

[548] Act No. 025 of 12 July 2012, on compensation of victims of the rebellion of 17 January 2012 and of the insurrection of 22 March 2012.

[549] The Government's official casualty figures for 10 January 2013 are 11 dead and 60 injured. However, these figures are significantly under-estimated in the light of the information collected by the Commission during its visit to Konna through the testimonies of residents, visits to soldiers' graves and medical documents. This information suggests that a minimum of 50 to 60 soldiers were killed (most of them unidentified) and that more than 60 were injured. At least 8 of those injured were transferred to Bamako because of the seriousness of their injuries (identified). The ultimate fate of the injured soldiers is nevertheless unknown. In addition, the French Lieutenant Damien Boiteux, a co-pilot of one of the Gazelle helicopters who was shot and wounded, died on 11 January 2013 at Sévaré Airport. The number of members of extremist armed groups killed is unknown but is also believed to be significant, on the order of several dozen. Witnesses reported having seen many bodies, and the Commission was able to confirm the deaths of at least six people at the hospital in Sévaré and of one person in the locality of Konna. See RFI, Mali: retour sur les évènements de la journée du 12 janvier, 12 January 2013; testimonies Nos. 280, 328, 337, 334, 250, 325, 249, 269 and 468. Confidential medical document; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 130–131.

[550] Testimonies Nos. 283, 280, 323, 328, 327, 250, 325, 249, 282, 269, 337 and 334; Confidential document of witness No. 283; Confidential medical document.

could barely carry his weapon". Some children who had been members of MUJAO in the region of Gao since 2012[551] participated in the battle for Konna. The Commission also obtained information showing that some people, including children, who had distanced themselves from MUJAO were forced into vehicles and sent to fight in Konna. Multiple children associated with Ansar Eddine, MUJAO and AQIM lost their lives in the battle for Konna. A number of children, in particular from Kadji, near Gao, came back alive, although some had been injured, and returned to their villages of origin.[552] On 15 May 2013, the Secretary-General added Ansar Eddine and MUJAO to the list of entities that recruit and use children.[553]

319. In conclusion, there are reasonable grounds to believe that MUJAO, Ansar Eddine and AQIM used children, some of whom were under 15 years of age, in the battle for Konna, where a number of those children lost their lives.

[551] See case No. CEI18.

[552] Testimonies Nos. 280, 337, 370 and 468; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 131–135.

[553] Report of the Secretary-General on children and armed conflict (A/67/845–S/2013/245), 15 May 2013, Annex 1, List of parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals in situations of armed conflict on the agenda of the Security Council (updated to include Ansar Eddine, MNLA and MUJAO).

Explosive remnants of war in the commune of Konna

320. Incidents involving explosive remnants of war affected Konna during and just after the battle for the locality.[554] For example, on 10 January 2013, the day of the clashes, two men (identified) handled an explosive device that they had found at the market. The men, who were seriously injured after the device exploded and could not be taken to the hospital, died in the ensuing hours and days.[555] One witness explained that, as a result of the fighting and bombings, there were explosive remnants all over the streets. Some of them had exploded, while others had not.[556] In 2013, MINUSMA documented 11 incidents involving explosive remnants of war in the region of Mopti alone.[557]

321. Incidents related to the events which took place in January 2013 in Konna occurred years later. For example, on 10 July 2017, three 5-year-old children were struck by an exploding device while playing near the water pump in the village of Sendégué, in the commune of Konna. One of the children, who was playing with the device, died instantly, while the other two were injured and survived after receiving medical care at the reference health centre in Konna. Fragments of explosives and 20-millimetre ammunition that could have been fired from a helicopter were found near the scene.[558]

322. The Commission notes that it is extremely difficult to attribute responsibility for this type of incident. However, based on the information collected, it is likely that these explosive remnants of war were generated during the battle for Konna of January 2013. The Government of Mali has controlled the area since then and currently has full access to the area.

v. January 2013 – Summary executions and enforced disappearances of Fulani, Arab and Tuareg civilians attributable to members of the Malian Armed Forces in Sévaré, Mopti and the surrounding localities[559]

323. The Commission gathered information concerning allegations of torture, enforced disappearances and summary executions of Tuareg, Arab and Fulani men by members of the Malian Armed Forces in Sévaré, Mopti and the surrounding area during the attack on Konna and in the ensuing days.[560] The Commission has confirmed the following such incidents: the disappearance of three Fulani

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[554] See above, case No. CEI28.

[555] Testimony No. 323.

[556] Testimony No. 283.

[557] See Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[558] Report of the United Nations police; confidential United Nations documents; interview with source No. 85.

[559] Case No. CEI29. See section on improvised explosive devices and explosive remnants of war below.

[560] In addition to the cases documented below: confidential report of HRPD, MINUSMA (alleged arrest by members of the Malian Armed Forces in Douentza in February 2013 of a 56-year-old Arab man accused of being a guide and accomplice of the rebels. He was allegedly taken to the camp of the Malian Armed Forces outside the locality of Douentza, where he was reportedly questioned about his relationship with the rebels, beaten on the back and ribs with belts and then tied to a post and forced to remain in a crouching position from 2 a.m. to 5 a.m. The next day, he was allegedly tied to a pickup truck and dragged for about 30 metres); confidential report of HRPD, MINUSMA (alleged arrest of a jeweller in Konna on 18 January 2013 by persons believed to be members of the volunteer commando group (GVC). The man was allegedly taken to the Malian Armed Forces checkpoint at the entrance to the locality of Konna and, although they searched for him in Konna and Sévaré, his family never saw him alive again); confidential report of HRPD, MINUSMA, and report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, para. 25. HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp.128–130 (arrest of an imam (identified)

men in the village of Abdoul Karim on 9 January 2013; the execution of at least 12 people, who were dumped into wells in the locality of Sévaré, on 11 January 2013; the execution of three young Fulanis in front of the Sévaré military camp on 11 January 2013; and the disappearance of a 72-year-old Tuareg man in Sévaré on 11 January 2013.

Disappearance of three Fulani men in the village of Abdoul Karim

324. On 9 January 2013, the first day of the battle for Konna, in the village of Abdoul Karim, which is located eight kilometres from the locality of Konna, three men of Fulani origin (identified), aged between 20 and 40, disappeared after going out on a motorcycle to look for their animals in the vicinity of the village. The three men spoke only Fulfulde. When they did not return from their ride, their families tried to reach them by telephone. In broken Fulfulde, an unfamiliar voice replied to a relative of one of the victims that the victim was in Sévaré, and hung up. A relative of another victim allegedly received a similar response in the Bambara language when he called the victim's telephone number. Their families searched the area and believed that they had found the motorcycle that was being used by the three men at the time of their disappearance in the military camp in the city of Sevaré. The families approached members of the Malian Armed Forces, who told them that they had found only the motorcycle but none of the men. Those soldiers advised the families to file a report with the gendarmerie. The families requested assistance from a local authority, who went to the military camp two weeks after the disappearance in search of information. That authority was reportedly informed that the three men had been killed, but that information could never be confirmed.[561] The men were never seen alive again.

325. In addition, the Commission notes that the victims' families were convinced that the three men were arrested by members of the Malian Armed Forces, although there were no direct witnesses to the scene. Their conviction was based on three observations. First, according to one of the Commission's interlocutors, the motorcycle on which the three men were riding on the day of their disappearance was found at the Sévaré military base. Second, a third party who allegedly inquired about the fate of the three men at the Sevaré military camp was reportedly told that they had been killed. Third, the Malian Armed Forces had a significant presence in Sévaré, and maintained security in and monitored the locality de facto. The Commission notes that, based on the information collected, there was indeed, at the time of the events, a temporary Malian Armed Forces post in the village of Abdoul Karim whose commander was identified. Moreover, on the day the three men disappeared, the voluntary commando group (GVC) had gone on a reconnaissance mission to Konna and had stopped in Abdoul Karim in order to deliver armoured vehicles to the members of the Malian Armed Forces in the village.[562]

326. In view of this information, the Commission considers that there are reasonable grounds to believe that the three Fulani men from the village of Abdoul Karim were arrested by members of the Malian Armed Forces on 9 January 2013. Although the Commission conducted various interviews with the military commanders of the Malian Armed Forces and sent official requests to the Government of

at his home in Sofara on the evening of 21 January 2013 by persons believed to be members of GVC. The imam's body was reportedly found five days later one kilometre from the village, without any traces of bullets or torture.)

[561] Testimonies Nos. 284, 265 and 324; confidential document of HRPD, MINUSMA.

[562] Testimony No. 532.

Mali, it has still not received specific information about possible legal proceedings related to these abuses.[563]

[563] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice (both remain unanswered to this day).

Summary executions of at least 12 people, who were dumped into wells, in the locality of Sévaré on 11 January 2013

327. The investigations conducted by the Commission confirmed that at least 12 people, some of whom were identified, were executed on 11 January 2013 by members of the Malian Armed Forces based in Sévaré, and were dumped into wells in the Waïludé neighbourhood. Those 12 people were arrested at the bus station in Sévaré before the 1 p.m. prayers for allegedly collaborating with extremist armed groups. It seems that all of the people arrested could not prove their identities and that they wore "clothing similar to that worn by Islamists". They were executed by members of the Malian Armed Forces, who dumped their bodies into wells not far from the bus station in the Waïludé neighbourhood. Among the victims were a Hausa couple from Niger and an old man from Gao, aged 62, and his son (identified). Those summary executions took place in broad daylight and in public view.[564]

328. Journalists, human rights organizations and an OHCHR special mission that arrived on the scene just after the events were able to note for themselves blood-like traces and a fetid odour emanating from a number of wells in Waïludé. Many neighbourhood residents provided testimony immediately after the events, but, after receiving threats, soon became more wary and refused to speak or to reveal their identities. The Commission notes that there is still significant reluctance to speak about that incident in the city of Sévaré, even seven years later.[565]

329. The Commission is convinced that that was not an isolated incident, as it has received similar allegations of summary executions believed to have been committed by members of the Malian Armed Forces on 10 and 11 January 2013. Those allegations relate to at least 18 people whose bodies were reportedly dumped into nine wells which are now closed. The bodies were never exhumed.[566] The information collected seems to indicate that the Army targeted people who resembled members of armed groups, whom witnesses described as "light-skinned persons" and persons "dressed like northerners" or "dressed like Islamists".

Summary execution of three young Fulani men outside the Sévaré military camp

330. On 11 January 2013, three (identified) young Fulani men between 18 and 22 years old, who were students at a Qur'anic school in Sévaré and were wearing turbans, left the house of an uncle of two of them between 2 p.m. and 3 p.m. They were passing in front of the Sévaré military camp, travelling by motorcycle, when they were arrested at the side of the road and subsequently shot dead by one or more

[564] HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 128–130; AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 8–19; testimony No. 455; Interview with source No. 93, para. 10; See also, FIDH-AMDH, Avoiding revenge in order to win peace, 28 February 2013; L'Express, Les militaires maliens coupables d'exactions, by Dorothée Thiénot, 20 January 2013; Le Monde, A Sévaré, l'armée malienne "zigouille" des suspects, 24 January 2013.

[565] Testimony No. 455;Iinterview with source No. 93. HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 128–130; report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, para. 25; Two confidential testimonies from OHCHR; L'Express, Les militaires maliens coupables d'exactions, by Dorothée Thiénot, 20 January 2013.

[566] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, para. 25; Confidential report of HRPD, MINUSMA. AI, Mali: First assessment of the human rights situation after three-week conflict, 1 February 2013, pp. 8–19; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 128–130.

(unidentified) soldiers of the Malian Armed Forces on guard outside the camp. According to the testimonies gathered, the three men were unarmed and were not members of an armed group. The testimonies also indicate that the soldiers were so informed by a witness to the arrests, who knew and spoke up for the three young men but was threatened and chased away. The bodies were never returned to the families, and several people interviewed asserted that the victims had been buried inside the Sévaré military camp, although they had not personally witnessed the burial.[567] The Commission discussed those cases with the military command of the Malian Armed Forces and formally asked the Government of Mali for information regarding the response to the incident. As yet, the Commission has not received specific information concerning any investigations or legal proceedings initiated against the Malian Armed Forces soldiers responsible for the abuses.[568]

Disappearance of a 72-year-old Tuareg man in Sévaré

331. On 11 January 2013, an (identified) 72-year-old dark-skinned Tuareg man was arrested and beaten by soldiers of the Malian Armed Forces who were passing on the road as he left his house in Sévaré. He was then taken to the military checkpoint, where he was slapped, kicked and beaten again, in front of witnesses. The man's son later went to the checkpoint looking for him, but the soldiers threatened to arrest him. He has not seen his father since.[569]

Alleged perpetrators and judicial follow-up

332. The Commission notes that, at the time of the events, many soldiers and units of the Malian Armed Forces were in Sévaré and Mopti, owing to their retreat in 2012 and the assault by extremist armed groups on the locality of Konna.[570] The Commission has collected and compiled in a confidential annex the names of the military leaders responsible for the troops in and around Sévaré at that time, an (identified) colonel, an (identified) commander in charge of the military camp in Sévaré, and Malian Armed Forces soldiers associated with certain incidents.[571]

333. According to a well-informed and credible source interviewed by the Commission, the authorities were aware of the alleged enforced disappearances and summary executions of Tuaregs, Arabs and Fulanis in January 2013 and knew that a prosecutor had requested investigations in 2014 or 2015. However, according to the same source, it is impossible for investigations into such matters to yield results, as judicial officials could be put in danger if the investigations showed that members of the Malian Armed Forces still on active duty in the Mopti region or holding important national-level posts were involved. The Commission asked the Malian authorities for information about any judicial proceedings under way concerning the soldiers of the Malian Armed Forces who had committed the abuses, but no reply has been received as at the date of submission of this report.[572]

[567] Testimonies Nos. 491, 496, 391, 453 and 314; Interview with source No. 93; See also confidential report of HRPD, MINUSMA; AI, Mali: Agenda for human rights in Mali, November 2013, p. 15.

[568] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[569] AI, Mali: First assessment of the human rights situation after three-week conflict, 1 February 2013, pp. 8–9; Interview with source No. 93.

[570] See the section entitled "Main actors in the 2012 Malian crisis".

[571] See also testimonies Nos. 534, 533 et 453.

[572] Testimony No. 508; Note verbale 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

334. It took the Commission considerable effort to document the above-mentioned incidents, and there were additional incidents that could not be documented. As with the abuses committed by the Army in 2012 in Sévaré and the surrounding localities, victims, witnesses and sources expressed fear of threats and reprisals if it became known that they had shared their testimonies.[573] It is clear from the information gathered that some people who tried to speak out about the incidents at the time were threatened by soldiers of the Malian Armed Forces.[574] The extensive media coverage of the abuses involving the wells in Sévaré only increased the fear of reprisals, which explains why, even though time has passed, it is still difficult to document violations, abuses and crimes committed by soldiers of the Malian Armed Forces in Sévaré, Mopti and the surrounding region in 2012–2013. In the opinion of some people interviewed by the Commission, the conduct of independent and in-depth judicial investigations into these incidents attributable to the Malian Armed Forces in the Mopti region in 2013 should be a priority in the Government's efforts to combat impunity, given the symbolic importance that such investigations would have in building lasting peace in Mali.[575]

vi. January 2012 to June 2013 – Rapes by unidentified armed men in Douentza cercle and the locality of Konna[576]

335. The Commission documented a number of cases of sexual violence perpetrated in the Mopti region between January 2012 and June 2013, most of which concerned rapes committed in the locality of Konna (Mopti cercle) and Douentza cercle, although that does not mean that no sexual violence was committed in other areas of the Mopti region during that period.[577]

Rapes in Douentza cercle by unidentified armed men

336. The Commission interviewed a woman from Douentza who described how, in January 2012, while she was travelling from Douentza to Bamako, the bus she was in had been attacked in broad daylight by seven (unidentified) armed men a few kilometres from Douentza. The attackers forced nine young women and two girls around the age of 13 or 14 off the bus and then raped them. While two armed men watched the bus, the other five attackers took turns raping the women. The woman interviewed had been raped by two of the attackers, one with a fair complexion and one with a dark complexion. They slapped her when she refused to undress and threatened to kill her if she did not comply. She stated that the two girls around the age of 13 or 14 had also been raped by the two attackers who had been guarding the bus. While those two men were raping the girls, the other attackers stole phones, money and clothing from the passengers, before allowing the bus to depart. The seven men were all armed and "wore long boubous with trousers and turbans". They spoke Tamashek and French and drove a brown "Land Cruiser". For fear of stigmatization, the victim had never before spoken about the rape and has not filed a complaint.[578]

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[573] See, for example, testimonies Nos. 391 and 453.

[574] HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012–2017, 2017, pp. 108–110.

[575] See, for example, testimony No. 508.

[576] Case No. CEI30.

[577] For other cases from the Mopti region during the same period see, for example, criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014.

[578] Testimony No. 261.

337. Another woman, now 47 years old, testified that around seven years previously, sometime between July and September 2012, (unidentified) armed men had carried out an early-morning attack on the village of Boulikessi, in Douentza cercle. She was at home with her father and children when three men, two of whom were armed, entered. They threatened her and, for fear of being killed, she did as they said. The three men raped her at gunpoint. She did not scream, as her children were asleep and she did not want them to wake up in case the men hurt them. After the rape, her (identified) father came out of his room and confronted the men as they were leaving. The attackers shot and killed him in the compound. The woman said that two of the men were light-skinned and one dark-skinned, that they wore turbans, and that they arrived on two motorcycles. She did not know where they came from or who they were, but said that they were known for having attacked villages. The victim had never before spoken about the rape and has not filed a complaint.[579]

338. The Commission collected credible information concerning three other cases of rape, in addition to the two cases described above, including the rape of a pregnant woman in Douentza and a rape in the locality of Hombori, Douentza cercle. The three rapes were committed by unidentified armed men at the workplaces or homes of the victims and are included in a class action complaint filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.[580]

Three rapes in the locality of Konna, at least one of which was committed by members of an extremist armed group (MUJAO, Ansar Eddine or AQIM)

339. In January 2013, during the period when extremist armed groups were in Konna, a 38-year-old woman was raped by six armed men at her house in Konna. The men broke into her house and chased her husband away by threatening him at gunpoint. They then grabbed and raped the woman. She described the attackers as “white-skinned” and said that all of them had been armed. Given the circumstances, that rape can be attributed to members of one of the extremist armed groups involved in the battle for Konna (Ansar Eddine, AQIM or MUJAO).

340. The Commission also gathered credible information about two other rapes in the locality of Konna. One of the victims described her attacker, who raped her three times, as a “white-skinned” armed man wearing a turban. The three victims were part of a class action complaint filed on 12 November 2014 with the senior investigating judge of the Court of First Instance of Bamako, commune No. III.[581]

Alleged perpetrators and judicial follow-up

341. Most of the victims gave general physical descriptions of their attackers. All the attackers were armed men, and most were with a group of attackers, although it was not always clear whether or not

[579] Testimony No. 319.

[580] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014.

[581] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014.

they belonged to organized armed groups.[582] At least one of the instances of rape in Konna can be attributed to one of the extremist armed groups that attacked the locality in January 2013 (Ansar Eddine, AQIM or MUJAO). Douentza cercle is in the area that was claimed by MNLA as "Azawad" and was under MNLA control from 5 April 2012. Following the departure of MNLA sometime after June 2012 (exact date unknown), the Ganda Izo group maintained an advance base in the locality until 1 September 2012, when it was driven out by MUJAO, which controlled the locality until mid-January 2013.

342. Several victims of the rapes described above had not previously dared to speak of their experience or file a complaint, either for fear of reprisals or because they did not have confidence in the Malian judicial system. However, other victims of rapes in the Mopti region were among the 82 victims who, with support from human rights organizations, filed a class action criminal complaint and accompanying civil claim with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014. The Malian judicial authorities have interviewed some of the victims, with assistance from human rights organizations, but so far no suspects have been prosecuted and victims have not received any reparations.[583]

vii. 18 March 2013 – Summary execution of at least 15 men at the Dungurua well in Ténenkou cercle by between six and eight armed men associated with MNLA or Ansar Eddine[584]

343. On 18 March 2013, about 17 merchants, including four women, from the Fulani and Bella Tuareg communities (some of whom have been identified), were travelling in a vehicle on their way back from the market in the locality of Diurra. At around 2 p.m., they were stopped on the Diurra-Dungurra road (between Mbolonkobe and Nania) in Ténenkou cercle by between six and eight armed men, who were described by witnesses as belonging to the Tuareg community. They used the passengers' turbans and trousers to blindfold them and tie their hands. They then made them lie face-down in the sun and ordered them not to move. The attackers searched the passengers and took their belongings and money. A second pick-up truck with at least 14 passengers on board (some of whom have been identified) was stopped at the same location at around 4 p.m. Again, the attackers forced the passengers out of the vehicle, blindfolded them and made them lie down in the sun. Several people on motorcycles were also stopped over the course of the afternoon. Later that day, the attackers divided the passengers into two groups and transported them in the vehicles to a well 12 or 13 km from where the vehicles had been stopped. The women (two Fulanis and two Bella Tuaregs) were then released.[585]

344. The attackers threw at least two people into the well alive. A third man, realizing what was happening, begged the attackers to shoot him rather than throw him down the well. The other passengers started to run, despite being blindfolded and having their hands tied. The attackers opened fire on the men who were trying to escape. Some were able to escape. Others were shot dead and then thrown into the well. The next morning, the inhabitants of the village of Dungurua, accompanied by gendarmes who had travelled to the location with fuel paid for by the residents, saw traces of blood leading to the well

[582] Testimonies Nos. 261 and 319; criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014.

[583] Testimony No. 507, para. 21; Memorandum of 20 February 2020 from the Commission of Inquiry addressed to the Attorney-General of the Bamako Court of Appeal.

[584] Case No. CEI31.

[585] Confidential report of HRPD, MINUSMA on the mission conducted from 1 to 3 April 2014; Confidential testimonies of victims and witnesses collected by HRPD, MINUSMA; Testimonies Nos. 321 and 256.

and smelled a bad odour coming from it. The Commission estimates, on the basis of its analysis of the testimonies collected, that during this incident more than 15 people were thrown into the well, either while they were still alive or after having been shot dead.[586]

345. Between six and eight attackers were consistently mentioned in the testimonies. The attackers spoke Tamashek and belonged to the Tuareg community. They carried AK-47-type guns and wore turbans; some were dressed in military fatigues, while others wore "beige boubous" "that Islamists wear". As the attackers forced the merchants out of their vehicle, they shouted, "Get out, all of you, go and tell the soldiers, we're going to kill you all ... This is Mali no more, this is Azawad". Several witnesses stated that they had recognized at least four of the attackers as (identified) men from the region and knew the name of the owner of the vehicle used by the attackers. They said that those individuals had been associated with the MNLA or Ansar Eddine at the time of the events and that they had left the area after the incident.[587]

346. In conclusion, the Commission finds that there are reasonable grounds to believe that on 18 March 2013, at least 15 men were killed by between 6 and 8 men of Tuareg origin who were allegedly associated with MNLA or Ansar Eddine at the time of the events, and that the victims were either thrown down a well while they were still alive or shot dead and then thrown down the well.

347. The Commission notes that a complaint was filed with the Léré gendarmerie. A delegation from the Judicial Investigation Service of the gendarmerie and a team from the Human Rights and Protection Division of MINUSMA visited the site in early April 2014. They collected testimonies and, upon inspecting the well, observed that it contained what appeared to be human bones. To the Commission's knowledge, the bodies have not been exhumed to date.[588] The Mopti prosecutor's office could not confirm whether the case was with the Mopti authorities or with the Special judicial unit in Bamako. The Commission contacted the Special judicial unit to ask whether the complaint had been referred to it. As at the date of submission of this report, the Commission has not received a response from the Unit with regard to that specific case.[589] The survivors and the families of the victims stated that they had never received any information concerning the results of the judicial inquiry opened in 2014. The perpetrators have not been prosecuted.

5. Region of Ségou

i. 9 September 2012 – Summary execution of 16 Malian and Mauritanian preachers attributable to Malian Armed Forces soldiers from the Diabali military camp[590]

348. During the night of 8 to 9 September 2012, 18 (identified) unarmed men belonging to the Dawa Muslim religious movement, who were Malian and Mauritanian nationals and mostly of Arab origin,

[586] Confidential report of HRPD, MINUSMA on the mission conducted from 1 to 3 April 2014; Confidential testimonies of victims and witnesses collected by HRPD, MINUSMA; Testimonies Nos. 321 and 256.

[587] Confidential report of HRPD, MINUSMA on the mission conducted from 1 to 3 April 2014; Confidential testimonies of victims and witnesses collected by HRPD, MINUSMA; Testimonies Nos. 321 and 256.

[588] Confidential report of HRPD, MINUSMA on the mission conducted from 1 to 3 April 2014; Confidential report of HRPD, MINUSMA.

[589] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako; Follow-up note verbale dated 12 March 2020 addressed to the Minister of Justice.

[590] Case No. CEI32.

were arrested at a checkpoint by several soldiers of the Malian Armed Forces.[591] Sixteen of the men were executed a few hours later at the Diabali military camp in Niono cercle. According to the testimonies gathered by the Commission, one of the Malian Armed Forces soldiers thought that he recognized one of the men as a member an extremist armed group, and his companions were then assumed to be in the same situation because of the way they were dressed. In reality, the men had been on their way to a religious conference in Bamako.[592] The bodies of the nine Mauritanian victims were transported to Nouakchott on 12 September 2012 and buried the same day, while the Malian victims were buried in Bamako on 14 September 2012.[593]

349. Five Malian Armed Forces soldiers on duty at the Diabali military camp on the night of 8 to 9 September 2012 were involved in the incident. The (identified) commander on duty that evening was in his office at the time of the events and therefore was unable to prevent the incident. The witness who testified to that effect did not know whether the soldiers involved had been arrested, however. According to the testimonies collected, the five soldiers have not been punished, even though the Malian authorities know who they are. Apparently, one of them has died and the other four have been reassigned. The commander of the Diabali military camp at the time of the events has been identified.[594]

350. Under pressure from the Government of Mauritania, the Government of Mali issued an apology and promised to investigate the incident.[595] The Ségou gendarmerie opened an initial investigation and on 23 May 2013 the Government of Mali established a joint commission of inquiry (involving the police, the military, the gendarmerie, the judiciary, representatives of human rights institutions, the Ministry of Justice, and experts from Mauritania) to investigate the incident. The commission of inquiry was supposed to submit a detailed report to the Minister of Justice and Keeper of the Seals, but it has not done so. It has only conducted a single field mission to the scene and the area and produced one progress report. Additional missions were planned but could not be conducted because the Government of Mali, for reasons unknown to the members of the commission of inquiry, refused to reimburse their mission expenses. The process was thus brought to a halt. While the military personnel who were at the Diabali camp during the joint commission's field mission had been very cooperative, the actual soldiers under investigation had been reassigned elsewhere, despite an explicit request to the Minister of

[591] "Dawa" is a term used in the Sahel to refer to a religious preaching association that has its origins in the Indian and Pakistani movement known as Tabligh or Tablighi Jamaat. Dawa, which has been in Mali since the 1980s, advocates religious proselytism and a return to a traditional form of religious practice. Because Iyad Ag Ghali and Amadou Koufa were members of Dawa prior to the 2012 crisis, the movement is often criticized as having connections to extremist armed groups. See, for example, Tone Sommerfelt, Anne Hatløy and Kristin Jesnes, Réorganisation religieuse au sud du Mali, 2015.

[592] There were 18 passengers in the vehicle at the time of the arrest by the Malian Armed Forces, two of whom survived: the Malian driver and a man of Malian-Mauritanian nationality, who both managed to run away. Testimony No. 539; HRW, Mali conflict and aftermath: Compendium of Human Rights Watch Reporting, 2012–2017, 2017, p. 117; AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 13-14; confidential document of HRPD, MINUSMA. See also Africabone, Fusillade meurtrière au Mali : la Mauritanie dénonce un 'assassinat collectif', 10 September 2012.

[593] RFI Afrique, Au Mali, obsèques des prédicateurs de la Dawa tués à Diabal, 14 September 2012.

[594] The names are contained in a confidential annex to this report; AI, Mali: Civilians bear the brunt of the conflict, September 2012, pp. 13-14; Confidential document of HRPD, MINUSMA; Testimony No. 539.

[595] The press release is available online at Africabone, Fusillade meurtrière au Mali : la Mauritanie dénonce un 'assassinat collectif', 10 September 2012.

Defence that they be made available for the inquiry, such that the joint commission was not able to interview them.[596]

351. The Commission concludes that there are reasonable grounds to believe that during the night of 8 to 9 September 2012, 16 unarmed men were summarily executed by at least 5 Malian Armed Forces soldiers from the Diabali military camp who were on duty that night. The Commission notes that it received information about other similar incidents involving Malian Armed Forces soldiers from the Diabali military camp that allegedly took place during that period, but was unable to confirm them because the witnesses identified were reluctant to speak. That was the case, for example, with regard to allegations that at least eight Tuareg nomadic herdsmen were summarily executed around 20 October 2012.[597]

ii. January 2013 – Attack on the locality of Diabali by Ansar Eddine, AQIM and MUJAO[598]

Execution of five wounded soldiers and one civilian during the capture of the locality of Diabali by Ansar Eddine, AQIM and MUJAO

352. On 14 January 2013, at around 6 a.m., several hundred Ansar Eddine, AQIM and MUJAO fighters in approximately 40 vehicles attacked the locality of Diabali, Niono cercle, where the Malian Armed Forces had a military camp. The fighters were led by two (identified) former colonels who had deserted the Malian Armed Forces and joined Ansar Eddine, and by the head of the Tarik Ibn Zied katiba of AQIM (who died in February 2013).[599] The offensive took place concomitantly with the attack on the locality of Konna, in the Mopti region, which had begun on 9 January 2013.[600] After a few hours of fighting, the locality fell under the control of the attackers, and the Malian Armed Forces, having suffered heavy losses, were forced to withdraw.[601]

353. The following day, five (identified) Malian Armed Forces soldiers who had been injured the day before were shot dead by (unidentified) members of Ansar Eddine and/or AQIM as they lay in a patrol vehicle that had been immobilized during the fighting.

354. The Commission was able to confirm that some Diabali residents were injured in the fighting between the Malian Armed Forces and extremist armed groups, and that an (identified) civilian who

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[596] Order No. 2013-2164/MJ-SG of 23 May 2013 establishing a commission of inquiry to investigate the circumstances of the deaths of Malian and Mauritanian preachers in Diabali on the night of 8 to 9 September 2012, published in Official Gazette of the Republic of Mali No. 41, 11 October 2013, p. 1624; Confidential document of HRPD, MINUSMA; Testimony No. 539.

[597] Confidential documents of HRPD, MINUSMA; HRW, Mali: Rising ethnic tensions threaten new violence, 20 December 2012; See also Maliweb.net, Mali: plusieurs Touareg tués par des hommes en uniforme de l’armée à Diabali, 24 October 2012; RFI Afrique, Mali : le MNLA demande à Bamako des explications sur les récentes exactions contre les Touaregs, 27 October 2012 ; See also case No. CEI34 and No. CEI35.

[598] Case No. CEI33.

[599] Testimonies Nos. 290 and 291; AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 11-13; See also Grand-reporters.com, Mali. La bataille de Diabali, 30 January 2013; Lapresse.ca., Mali : Diabali, une ville à reconstruire, 25 January 2013; Le Point, Mali : des islamistes prennent la ville de Diabali, 14 January 2013.

[600] See case No. CEI28.

[601] Testimonies Nos. 290 and 291; See also Grand-reporters.com, Mali. La bataille de Diabali, 30 January 2013.

had left his home to get food from the town and had been arrested by (unidentified) members of extremist armed groups had been executed as he attempted to escape.[602]

355. The extremist armed groups held Diabali for three days, during which time they destroyed and pillaged the official buildings, the military camp and the church. The extremist armed groups were intensively bombarded by French forces and withdrew from Diabali on 17 January 2013, which enabled the Malian and French armed forces to retake the town without violence on 21 January 2013.[603]

Rapes by Ansar Eddine and/or AQIM

356. The Commission collected credible information concerning three rapes, including that of a pregnant woman, that were allegedly committed by members of Ansar Eddine and/or AQIM during the period in which they controlled the city of Diabali. On the night of 13 to 14 January 2013, four armed men, who were described as Fulani, burst into the home of a 30-year-old woman who was three months pregnant. The attackers threatened the woman and her husband with a weapon. When the woman resisted, they threatened her with death and injured her hand with a sharp object. She was thrown to the ground and raped in front of her husband. Her 14-year-old niece was also raped. The woman subsequently miscarried and suffered gynaecological complications. During the period in which extremist armed groups occupied the city of Diabali, armed men burst into a house and detained all the occupants in the compound, where they raped a 22-year-old woman in front of her husband and other family members. A third woman, also aged 22, was raped in her home by three armed men, who broke into her room during the night while she was sleeping with her children. They threatened her with a gun, and two of them took turns raping her. Those three women were among the submitters of a joint complaint filed on 12 November 2014 with the senior investigating judge of the Court of First Instance of Bamako, commune No. IIIo.[604]

Recruitment and use of children by Ansar Eddine, AQIM and MUJAO

357. According to an Amnesty International report whose documentation methodology was directly verified by the Commission and which has been corroborated by other public information, multiple residents of the locality of Diabali confirmed that they had seen persons whom they believed to be armed boys with the extremist armed groups. The boys had been dressed like all the other fighters. For example, two boys, one of whom was 16 years old (identified), were arrested after Diabali was recaptured and were detained at the gendarmerie station in Ségou before being handed over to the social affairs department. One of them said that he had been sold to Ansar Eddine along with 23 other students with the same Qu'ran instructor, and that he had then joined 14 other young people carrying firearms. Before taking part in the attack on Diabali, he had worked as a cook for an extremist armed group. He also explained how he had been trained to shoot by aiming at the heart or feet.[605]

[602] Testimonies Nos. 290 and 291; AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 11–13.

[603] Testimonies Nos. 290 and 291; Grand-reporters.com, Mali. La bataille de Diabali, 30 January 2013.

[604] Criminal complaint and accompanying civil claim filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014.

[605] AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 11–13; Interview with the child during the ORTM news broadcast of 27 January 2013. See also Grand-reporters.com, Mali. Boubacar, enfant, esclave et soldat du Djihad, 9 February 2013.

Conclusion

358. The Commission considers that there are reasonable grounds to believe that unidentified armed men belonging to Ansar Eddine and/or AQIM executed at least five members of the Malian Armed Forces who had been wounded and were hors de combat, as well as one other man, on 15 January 2013; raped at least three women and one 14-year-old girl; and recruited and used children. Although it has sent official requests to the Government of Mali, the Commission has still not received specific information regarding investigations or legal proceedings initiated in connection with those incidents.

iii. 15–18 January 2013 – Summary executions of one man from the Fulani community and of two men from the Tuareg community in Niono cercle attributable to members of the Malian Armed Forces from the Diabali military camp

359. Just after the Malian Armed Forces had lost control of the locality of Diabali to Ansar Eddine, AQIM and MUJAO, members of the Malian Armed Forces from the Diabali camp summarily executed at least one man from the Fulani community and two men from the Tuareg community in Niono cercle on 15 and 18 January 2013, respectively.

15 January 2013 – Arrest and summary execution of a man from the Fulani community in the locality of Niono by members of the Malian Armed Forces from the Diabali camp[606]

360. On 15 January 2013, a 40-year-old merchant and member of the Fulani community of Niono (identified) was summoned to the gendarmerie station in Niono by the commander of the local gendarmerie brigade (identified), who suspected him of collaborating with the armed groups that had instigated the 2012 crisis because he had spoken on the telephone in Fulfulde.[607] The next day, while the victim was still in detention at the gendarmerie station, the commander left the station momentarily. Six members of the Malian Armed Forces came to the station and took the victim to an unknown location.

361. On 24 April 2013, the man’s body was found buried in a shallow grave near the Niono prefecture and the military camp. Members of the Office of the Prosecutor of Niono and Ségou went to the site and found the hastily buried body, which they identified from the identity card found on the victim and from the shoes that he was wearing. The body was then moved and buried in the Niono cemetery. Subsequently, while on a visit with a judge from Niono to the site where the body had originally been buried, representatives of a human rights organization were surrounded by members of the Malian Armed Forces, who threatened them. The prefect had to intervene to defuse the situation.

362. Testimonies and documents obtained by the Commission concerning the incident indicate that the commander of the Niono gendarmerie brigade (identified) voluntarily left the gendarmerie station just before the members of the Malian Armed Forces arrived. The investigations also made it possible to identify at least three members of the Malian Armed Forces who had been stationed in Diabali at the time of the events and who had been at least witnesses to, if not participants in, the disappearance of the victim from the Niono gendarmerie station.[608]

[606] Case No. CEI34.

[607] Testimony No. 505; Interview with source No. 93; AI, Mali. Preliminary findings of a four-week mission, 7 June 2013, pp. 11–12.

[608] Their names are contained in a confidential annex to this report.

363. In conclusion, there are reasonable grounds to believe that a member of the Fulani community of Niono was taken away from the Niono gendarmerie station on 15 January 2013 and was then executed and buried by members of the Malian Armed Forces stationed in Diabali. The victim's family filed a criminal complaint accompanied by a civil claim against the prefect at the time (identified) and against the commander of the Niono gendarmerie brigade. In the complaint, the family claimed that the commander had participated in the crime by voluntarily leaving the station shortly before the Malian Armed Forces arrived. In June 2013, an investigation was initiated. The investigation file was transferred to the Court of First Instance of Bamako, commune No. III. However, it appears that requests to the Minister of Defence to make a number of Malian Armed Forces soldiers who had allegedly witnessed or participated in the abduction at the gendarmerie station available to be interviewed have gone unheeded. The case is reportedly at the stage of final submissions, although relevant witnesses and suspects have not been heard because the competent authorities did not allow them to be interviewed.

18 January 2013 – Summary execution of two men from the Tuareg community by members of the Malian Armed Forces in the commune of Siribala, Niono cercle[609]

364. On 18 January 2013, a Tuareg marabout-farmer and a Fulani-Tuareg livestock merchant from the same family were at the former's home with other family members in the Foulawere neighbourhood of the locality of Siribala, Niono cercle, about 40 kilometres from Niono.[610] At around 2 p.m., three pick-up trucks containing at least 10 members of the Malian Armed Forces (unidentified) stopped in front of the marabout-farmer's house. The soldiers entered and searched the house, and then escorted the marabout-farmer outside. They came back to the house for the livestock merchant, whom they executed on the spot. They then executed the marabout-farmer not far from the house. Both bodies were left behind and buried in the compound by neighbours. The marabout-farmer's house was pillaged by residents of the locality. On the same day, members of the Malian Armed Forces went to a nearby house where another family of "light-skinned" (the expression used by witnesses) Malians lived, and searched the house without arresting or abusing the occupants.[611]

365. The information collected suggests that the marabout-farmer had been reported to the Malian Armed Forces by residents of Siribala because he was of Tuareg origin and was therefore suspected of being associated with the groups that had instigated the rebellion of 2012. When they arrived, the members of the Malian Armed Forces appeared to be looking for him specifically. The Commission was unable to identify by name the members of the Malian Armed Forces on patrol in Siribala that day, but the evidence collected shows that there were at least 10 of them and that they spoke Bambara and French. The Malian Armed Forces commander based at the Diabali military camp at the time was identified, and his name is included in a confidential annex to this report.

[609] Case No. CEI35.

[610] At the time of the events, the livestock merchant, after having fled to the M'Berra refugee camp in Mauritania in 2012 for fear of reprisals by the Malian Army following the outbreak of the rebellion, had decided to return to Mali for a few weeks in order to sell some of his livestock. The Tuareg marabout-farmer still lived in the locality of Siribala at a time when only three "light-skinned" (the expression used by witnesses) families still lived there.

[611] Testimonies Nos. 490, 498 and 499; AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 8–9; See also L'Express article of 1 February 2013, Mali: les Touaregs, suspects désignés.

366. In conclusion, the Commission received confirmation from multiple credible and reliable sources that, on 18 January 2013, two men had been executed by members of the Malian Armed Forces on patrol in the locality of Siribala, Niono cercle. No complaints have been filed by the victims' families, who have been afraid to turn to the Malian authorities. The Ségou gendarmerie brigade had nevertheless been informed of the incident as early as 2013.[612]

6. City of Bamako and region of Koulikoro

367. The clashes that had erupted on 17 January 2012 in the northern regions of Mali soon began to affect the southern part of the country, in particular Bamako, the capital, and Kati, located 15 kilometres from Bamako, in the region of Koulikoro. Kati is home to one of the largest military garrisons in the country, the Soundiata Keita military camp. In Bamako, as the crisis unfolded, civilians and members of the Malian Armed Forces increasingly lost confidence in the Malian authorities' ability to respond.

i. Theft and destruction of the property of several members of the Tuareg community in Kati on 1 February 2012[613]

368. At the very beginning of February 2012, wives and mothers of Malian Armed Forces soldiers, as well as young people, held demonstrations to protest the Government's management of the crisis in the northern part of the country and to condemn the military losses suffered. Civilians belonging to the Tuareg community in Bamako and Kati and their property were targeted by the local population and by individuals wearing military uniforms. On 1 February 2012, in Kati, the property and personal and professional belongings of multiple families from the Tuareg community (identified) were attacked, pillaged and destroyed by a crowd of angry demonstrators composed of civilians and individuals wearing military uniforms. For example, the demonstrators ransacked and pillaged a man's house while he was there with his 9-year-old niece, and insulted and threatened them. The demonstrators allowed them to leave the house without causing them physical harm. Their intention was clearly to attack the property of the Tuareg living in Kati. Although many members of the defence and security forces were stationed in Kati, they did nothing to prevent or stop those acts.

369. In the days and weeks that followed, owing to the inaction of the security forces, most members of the Tuareg community in and around Bamako fled to Burkina Faso, Mauritania or Niger out of fear for their safety. While many of them returned to Mali in the months that followed, some of them are still living in exile and have never received compensation for the material losses they suffered, notwithstanding the existence of Act No. 025 of 12 July 2012, on compensation of victims of the rebellion of 17 January 2012 and of the insurrection of 22 March 2012.[614]

ii. Coup d'état of 22 March 2012

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[612] In referring to the case in its report of February 2013, Amnesty International stated that the commander of the Ségou gendarmerie brigade at the time had indicated that an investigation into the incident would be opened. AI, Mali: First assessment of the human rights situation after three week conflict, 1 February 2013, pp. 8–9;

[613] Case No. CEI36.

[614] Testimony No. 478; Confidential documents provided by witness No. 478; Video provided by witness No. 478; AI, Press release: Violence in northern Mali causing a human rights crisis, 17 February 2012. See also Le Figaro, Les Touaregs de Bamako chassés par la peur, 9 April 2012. AFP video, Mali: Les populations touareg quittent Bamako, 5 April 2012.

370. Tensions peaked on 21 March 2012, when a mutiny erupted at the Kati military camp. On that day, General Sadio Gassama, then Minister of Defence and Veterans' Affairs, and the soldiers under his command went to the Kati military camp to discuss military developments in northern Mali. When they arrived, aggrieved members of the Malian Armed Forces threw stones at them, and their bodyguards had to shoot into the air to clear the area. After they left, non-commissioned officers and other soldiers came together and headed towards the presidential palace and ORTM headquarters. After brief clashes, the group took power, overthrowing the President of the Republic, Amadou Toumani Touré.[615] The mutiny turned into a coup d'état, which took place less than six weeks before the scheduled date of the presidential election, in which the incumbent President could not and did not wish to run for re-election. On the morning of 22 March 2012, under the leadership of the newly appointed Captain (now General) Amadou Haya Sanogo, the putschists made a statement on national television in which they announced the suspension of the Constitution, the dissolution of institutions and the establishment of the National Committee for the Re-establishment of Democracy and the Restoration of the State (CNRDRE).[616]

371. The Commission confirmed that at least two men had been shot and killed on 21 March 2012, and that three men and one woman had been shot and killed on 22 March 2012. Some of those killed were civilians (all identified). According to Amnesty International, around 30 injured persons were treated at Gabriel Touré Hospital in Bamako.[617] The coup d'état also resulted in damage to and the destruction of movable and immovable property belonging to private individuals (including houses belonging to politicians), the theft and extortion of private and public property (thefts from houses during searches, vehicle theft and the pillaging of shops, in particular), and damage to public property. For example, the Bourse du travail was set on fire and the Directorate-General of Customs was ransacked and pillaged. In addition, on 22 March 2012, a group of soldiers reportedly entered the Azalai Hotel, mistreated the guests and fired multiple shots inside the hotel.[618]

372. The coup d'état also resulted in the arrest and detention of several prominent figures from the deposed Government, including the Prime Minister and a number of government ministers, as well as military personnel, including generals, and other political figures (identified). Those persons were held in Kati for about ten days in very small cells without ventilation and outside of any judicial process. They were released following the conclusion of the framework agreement signed on 6 April 2012, under the auspices of ECOWAS. However, about 20 of them were arrested again on 16 April 2012 and in the days that followed.[619]

373. In conclusion, the Commission considers that there are reasonable grounds to believe that the coup d'état led to violence to life and person, damage to property and possessions, and arrests and detentions outside of any judicial process. The Commission is of the view that the responsibility lies with the members of CNRDRE and its President, Captain (now General) Amadou Haya Sanogo, who

[615] Testimony No. 430; CNDH, Annual Report 2012, July 2013, p. 28. See also Jeune Afrique, Mali: mutineries de militaires à Bamako et Gao, 21 March 2012; Confidential diplomatic document.

[616] See the statement delivered by CNRDRE on the ORTM news broadcast on the morning of 22 March 2012.

[617] Testimony No. 531; AI, Mali: Five months of crisis, May 2012, pp. 13–14. See also CNDH, Annual Report 2012, July 2013, p. 28; Testimonies Nos. 506 and 441.

[618] CNDH, Annual Report 2012, July 2013, p. 28; Testimony No. 430; Confidential diplomatic documents.

[619] Testimonies Nos. 430 and 506; CNDH, Annual Report 2012, July 2013, p. 28; AI, Mali: Five months of crisis, May 2012, pp. 13–14. Confidential document of HRPD, MINUSMA.

instigated the mutiny and the ensuing coup d'état.[620] On 18 May 2012, when CNRDRE still played a major role in managing State affairs, Act No. 2012-020, which granted amnesty for acts committed during the mutiny that led to the overthrow of the President of the Republic, was published in the Official Gazette. That law granted criminal and disciplinary amnesty for a long list of offences[621] to officers, non-commissioned officers, ordinary soldiers and any other persons who assisted them. As a result, no judicial investigation has been initiated to determine responsibility for the acts related to the coup d'état.

iii. 30 April to 2 May 2012 – Attempted counter-coup d'état by members of the commando parachute regiment and its suppression by CNRDRE and soldiers loyal to Captain Amadou Haya Sanogo[622]

374. On the evening of 30 April 2012, under the leadership of Lieutenant-Colonel Abdina Guindo, members of the thirty-third commando parachute regiment (RCP), commonly known as the "red berets", who had remained loyal to the overthrown President of the Republic, attempted a counter-coup d'état. RCP soldiers tried to take control of sites such as ORTM headquarters, Bamako Airport and the Kati military camp by force of arms, but were defeated by the CNRDRE forces.[623]

375. Many soldiers[624]and residents of Bamako were killed or wounded by bullets that night.[625] For example, a 17-year-old girl (identified) was killed by a bullet to the head while riding in a public transport vehicle that was allegedly shot at by RCP soldiers between the Libya Hotel and ORTM headquarters.[626] A soldier dressed in civilian clothes (identified) was shot in the right arm after a member of RCP (unidentified) opened fire on his vehicle without warning at a checkpoint in front of an RCP camp on the road between Bamako and Kati.[627] Based on the various testimonies and medical documents collected by the Commission, there were many casualties. About 50 injured persons were admitted to the emergency department of Gabriel Touré Hospital, and the same hospital recorded 21 deaths (9 soldiers, 1 police officer and 11 civilians, including 5 women). A 7-year-old girl died in another hospital in Bamako, and the bodies of an unknown number of soldiers were dropped off at the reference hospital in Kati.[628]

[620]The Commission identified other members of CNRDRE, whose names are included in an annex to this report.

[621]The offences mentioned in the law are: mutiny, violation of internal State security, violation of external security, destruction of buildings, opposition to legitimate authority, violence and assault, obstruction of the highway, murder, manslaughter, assault and battery, unintentional injury, kidnapping, illegal arrest, abduction, wilful damage to the movable and immovable property of others, arson, pillaging, extortion and fraudulent dispossession, aggravated theft, theft, violation of the freedom to work, and damage to public property.

[622]Case No. CEI37.

[623]Confidential diplomatic documents; testimony No. 430; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, pp. 24–29; FIDH-AMDH, Mali: Justice in process, March 2014, pp.14–17; Order No. 585, Indictment order and remand to the Assize Court, 22 December 2015, p. 4.

[624]Confidential documents from an NGO; confidential military documents. See also testimonies Nos. 441 and 430.

[625]FIDH-AMDH, Mali: Justice in process, p.14. See also confidential documents from a national civil society organization; confidential military documents.

[626]Confidential documents from a national civil society organization; confidential military documents. See also testimony No. 441.

[627]Testimony No. 444; medical documents.

[628]Confidential military documents; confidential diplomatic documents; testimony No. 441. See also testimonies Nos. 531 and 506.

Arrest of many civilians, soldiers and police officers and poor detention conditions, ill-treatment, torture and sexual violence at the Kati military camp[629]

376. After the failure of the counter-coup d'état, on 1 May 2012, at around 2 a.m., a sweep operation was launched against members of RCP, irrespective of whether they had participated in the counter-coup d'état, and against other similar persons. In particular, eight RCP soldiers (identified) were arrested at different locations, and at least three of them were beaten with rifle butts and kicked. One of them was laid face down and stabbed in the buttocks by members of the Malian Armed Forces (unidentified) using a knife attached to a military weapon. The eight soldiers were then filmed and the video was broadcast in the morning on ORTM. Although the soldiers were portrayed in the video as having participated in the counter-coup d'état, at least two of them had been arrested while driving around town and had neither participated in nor been aware of the counter-coup d'état.[630]

377. Those eight individuals were transferred to the Kati military camp on the orders of Captain Amadou Haya Sanogo. At the camp, they were detained in a small room with 75 other people, including civilians (17 Malians and about 30 foreigners) and soldiers who had been arrested during the night. After 24 hours, they were transferred to the prison at the Kati military camp. Almost all the civilian detainees were released between 7 and 8 May 2012. The number of soldiers and police officers detained, which is estimated at several dozen,[631] varied over the weeks that followed, as some were released and others were kept in detention. While most of the individuals arrested were transferred directly to the Kati military camp, some police officers were subjected to ill-treatment on the premises of the Mobile Security Unit. At least nine police officers received death threats and were severely beaten before being transferred to Kati.[632]

378. During the first few weeks of incarceration in the camp prison, detention conditions were deplorable. The entire group of detainees was given only one can of water and one portion of rice. Some detainees were forced to drink their own urine or that of other prisoners. Although the Commission did not hear testimony from any witnesses regarding that particular incident, two sources considered to be independent and reliable reported that at least four detained soldiers had been forced by camp leaders to have sex with each other. Many detainees were beaten with truncheons, sticks and rifle butts, and were kicked or burned with cigarettes. Other detainees had rags inserted into their mouths to the point of asphyxiation during interrogations. The detainees received repeated death threats.[633]

[629] The Commission also received information indicating that the spouses and daughters of "red berets" had been victims of sexual violence in Bamako. That information was reported by HRPD, MINUSMA and other indirect sources consulted by the Commission, but the Commission was unable to confirm it. Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, para. 55.

[630] Testimonies Nos. 395 and 484; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2012, p. 14; confidential document of HRPD, MINUSMA. The video is available online. See also FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, p. 36.

[631] Testimony No. 395; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 15.

[632] Testimony No. 506; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 15; HRW, Press release, Mali: Security forces "disappear" 20, torture others, 25 July 2012.

[633] Testimony No. 395; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 15; HRW, Press release, Mali: Security forces "disappear" 20, torture others, 25 July 2012.

379. That situation lasted until the end of May 2012, when the Minister of Justice, who had recently visited the premises, gave instructions to improve detention conditions at the military camp. The detainees were transferred to gendarmerie camp No. 1 in Bamako at the end of June 2012, and their detention conditions improved significantly. Many of those transferred were charged for their suspected involvement in the counter-coup d'état. The detainees were gradually released in 2013. Colonel Abdina Guindo, who was being held at the Directorate-General for State Security, was the last person to be released on 9 November 2013. Although the judicial proceedings against the persons suspected of participating in the counter-coup d'état are still ongoing, no judicial proceedings have been initiated with respect to the conditions in which the soldiers were detained at the Kati military camp and with respect to the abuses that they suffered there.[634]

Execution of 21 RCP soldiers and disappearance of at least 3 others

380. On the second day of their incarceration at the Kati military camp, during the night of 2 to 3 May 2012, at least 21 members of RCP—soldiers, a staff sergeant and a second lieutenant (all identified)—whose names were on a pre-established list were removed from their cells by Army soldiers. Once they were out of their cells, they had their hands and feet bound, were blindfolded, and then loaded onto an Army truck and taken to an unknown destination. They were never seen alive again.[635]

381. A year and a half later, on 3 December 2013, based on information provided by the witnesses heard during the investigation into those disappearances, a mass grave was identified in Diago, 15 kilometres from Kati. The bodies were exhumed and a forensic evaluation was ordered.[636] The quality of and approach underpinning that evaluation were thoroughly reviewed by the Commission's forensic doctor, who confirmed that the methodology used was in line with current scientific data on the identification of skeletal remains. Based on the data provided, the Commission's forensic doctor concluded[637]that the skeletons belonged to 21 males of African origin, 19 of whom were between 20 and 40 years old, and 2 of whom were over 40 years old. The decomposition of the bodies into skeletons indicated that the deaths had occurred several months earlier, a finding that is consistent with deaths dating back to April or May 2012. Military camouflage clothing was identified on some of the victims. Based on an examination of the clothing (in which a number of holes and bullet-like firearm projectiles had been found) and on the characteristics of the skeletal injuries, firearm wounds were identified mainly in the skulls and pelvises and, to a lesser extent, in the other parts of the skeletons. It was

[634]Testimonies Nos. 430 and 506. FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, p. 36; Interview with source No. 74; AI, Mali: "We haven't seen our cell mates since", 2012, p. 14; HRW, Press release, Mali: Security forces "disappear" 20, torture others, 25 July 2012.

[635]Order No. 585, Indictment order and remand to the Assize Court, 22 December 2015; Testimonies Nos. 395 and 484; interview with source No. 51; photos of the 21 missing soldiers; confidential document of HRPD, MINUSMA; OHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 14; HRW, Mali: Security forces "disappear" 20, torture others, 25 July 2012; AI, Mali: "We haven't seen our cell mates since", 2012, pp. 7–9; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, pp. 24–29.

[636]Order No. 585, Indictment order and remand to the Assize Court, 22 December 2015. Testimonies Nos. 430 and 429.

[637]Forensic evaluation report, Bamako, Mali, December 2013; DNA examination report signed on 12 January 2014, prepared by the laboratory of the Federal Bureau of Investigation; Report of the Commission's forensic doctor, 30 April 2020.

confirmed that some of the injuries were of perimortem origin.[638] Based on the genetic test performed on the pelvic bone samples, the skeletal remains of 17 individuals were identified.[639] Those individuals were on the list of the 21 people who had disappeared on the night of 2 to 3 May 2012.[640]

382. Several Malian Armed Forces soldiers who had participated in the operation that led to those executions were identified. It was determined that the list of prisoners to be removed had been given by a lieutenant (identified) to a chief warrant officer (identified). The lieutenant had reportedly asked the chief warrant officer and another soldier (identified) to dig the grave in the vicinity of Kati. In addition, eight of the victims had been wounded and had been removed from the hospital by a Malian Army captain (identified).[641]

383. At least three other RCP soldiers (identified) had also been missing since the night of 30 April to 1 May 2012. As their bodies were never found, it was not possible to determine their fate and, in particular, whether they had been executed after their arrest or whether they had been killed in combat during the attempted counter-coup d'état. The families are still waiting for answers from the justice system on the matter.[642]

384. On 16 December 2013, four graves at the Hamdallaye cemetery containing the skeletons of two women, one of whom appeared to be between the ages of 16 and 18, and of two men, one of whom was

[638] The examination focused only on the skeletal remains. The number of gunshot wounds, in particular in the soft tissues, could be much greater than indicated in the initial assessment. In addition, the association with other types of trauma (blunt force, suffocation or strangulation) cannot be eliminated.

[639] A sample from another family member was recommended in order to confirm the identities of three of the persons identified, which were highly probable but not certain. The assembly of the pelvic bones by the team of experts did not provide certainty as to whether each group of pelvic bones belonged to a single individual. The DNA test also did not include analysis of the teeth extracted from the 21 skulls. As a result, it was not possible to identify the skulls or to match them with the corresponding pelvic bones.

[640] A second evaluation was conducted in 2017 at the request of the Assize Court of Bamako. The related evaluation report, which was filed on 31 January 2018, was incomplete because it did not contain the results of the DNA tests, which were based on mandible samples from skulls found at the Gabriel Touré Hospital morgue and which were sent to a French laboratory. The results of those tests should have made it possible to identify the skulls and thus to assemble the pelvic bones identified during the first DNA test. Moreover, the version of the second evaluation report sent to the Commission contained only the conclusions and not the detailed autopsy report. The conclusions confirmed that most of the deaths of the 21 victims exhumed in Diago were related to gunshot wounds. However, in the absence of the detailed autopsy report, the Commission's forensic doctor did not have enough information to offer an opinion on the methodology used and the conclusions drawn, or to compare them with the results of the first evaluation. In the second evaluation report, it was also indicated that 28 skulls "all from excavation sites" had been collected at the Gabriel Touré Hospital morgue. In the absence of the detailed autopsy report and of more information on the excavation sites mentioned, the Commission cannot determine the sites of origin of the additional skulls collected by the experts, which likely contain the skeletal remains of the 21 bodies exhumed in Diago and the four bodies from the Hamdallaye cemetery in Bamako. See report on the implementation of activities within the framework of judgment No. 94 of the Court of Appeal of Bamako in Sikasso, 31 January 2018.

[641] Order No. 585, Indictment order and remand to the Assize Court, 22 December 2015, p. 5; testimony No. 430. See also report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, p. 14; AI, Mali: Agenda for human rights in Mali, November 2013, p. 11; AI, Mali: "We haven't seen our cell mates since", 2012, p. 7; HRW, Mali: Security forces "disappear" 20, torture others, 25 July 2012.

[642] Interviews with sources Nos. 51 and 74; Confidential document of HRPD, MINUSMA. In addition, a red beret (identified) was shot and killed on 10 August 2012, although the Commission was not able to establish whether that incident was related to the attempted counter-coup d'état. See medical document.

over 50 years old and could thus not have been a soldier, were opened. Although the victims could not have been soldiers, it was not possible to identify them or to establish a link between them and the counter-coup d'état on the basis of the forensic examinations.[643]

Alleged perpetrators and judicial proceedings

385. On 21 July 2012, an investigation was opened by the Attorney General at the Regional Court of Bamako, commune No. III into kidnappings perpetrated in connection with the disappearance of RCP members. On 1 October 2013, the investigating judge began to issue committal orders against several soldiers, some of whom were members of CNRDRE. Following the exhumations carried out in December 2013, the public prosecutor's office requested that the charges be reclassified as murder and accessory to murder. The investigation was closed on 10 February 2015 and the investigating judge indicted 28 people. In an order dated 22 December 2015, the Indictment Division remanded 17 of them (all identified) to the Assize Court, including General Amadou Haya Sanogo and a number of his associates serving in CNRDRE, for kidnapping, accessory to kidnapping, murder and accessory to murder.[644] On 30 November 2016, the trial opened at the Assize Court, which had been relocated to a mobile court in Sikasso, a town 380 km from Bamako. After a few days of hearings, the Court decided to adjourn the trial so that a new forensic analysis could be prepared, since the first, according to the judges, had not been performed in accordance with the procedures set out in the Code of Criminal Procedure.[645] Although the procedures established by the Assize Court provided for a resumption of the trial during the Assize Court's first session of 2017, it had not resumed by the date of submission of this report.[646]

iv. January-June 2013 - Detention of men and children in Bamako in connection with the conflict[647]

386. Starting in January 2013, when the large cities in the north of the country were recaptured by the defence and security forces and the French forces of *Operation Serval*, many people, the majority of them men, were arrested in the regions affected by the conflict and transferred to Bamako. Bamako remand prison quickly became overcrowded. Many people arrested in connection with the conflict were detained at Bamako gendarmerie camp No. 1 pending a committal order or their release, although the camp was not designed for that purpose. Detention conditions in Bamako were particularly poor at that time. While it is not possible to provide an exact figure for the number of people detained in connection with the conflict during the period under review, the Commission notes that the Secretary-General, in his report of October 2013, estimated that "[…]in Bamako, despite the release of some detainees for

[643]Confidential document of HRPD, MINUSMA; Testimony No. 506; Forensic evaluation report, Bamako, Mali, December 2013; DNA examination report signed on 12 January 2014, prepared by the laboratory of the Federal Bureau of Investigation; Report of the Commission's forensic doctor, 30 April 2020.

[644]The names of all the individuals charged in the case are listed in a confidential annex. The Commission chose to mention the name of Amadou Haya Sanogo because he was indicted and his name was already in the public domain in connection with the case. The Commission was not able to hear his version of events.

[645]Testimony No. 430; Interview with source No. 93; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, pp. 24-29; AI, Mali: Violations and abuses as instability spreads, 2017. See also HRW, Mali: 'Red Berets' trial marks progress in tackling impunity, 29 November 2016.

[646]For a detailed analysis of the trial, see the section on the fight against impunity.

[647]Case No. CEI38.

lack of evidence, as at 17 September more than 200 individuals reportedly remained in detention pending trial, in poor conditions and with inadequate medical care."[648]

Conditions of detention and deaths in custody at Bamako remand prison in April and May 2013

387. Many people detained in connection with the conflict in early 2013 were sent to Bamako remand prison, which was built in 1951 and is located in the centre of the city. The conditions in which detainees were held were particularly poor and were not in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), the revised rules adopted on 17 December 2015. Several deaths in custody were confirmed in April and May 2013, which is the hottest time of the year in Mali. At least five people died at Bamako remand prison from 7 to 14 April 2013.[649] Two detainees of Tuareg origin died during the night of 6 to 7 April 2013. They had both arrived at Bamako remand prison in late March; one had been arrested in Léré and ill-treated by soldiers of the Malian Armed Forces (identified) at the time of his arrest.[650] Two other people detained in connection with the conflict died at Bamako remand prison on 14 April 2013, including one of Songhaï origin who had been arrested on the island of Kadji in the Gao region during the operation conducted by the Malian Armed Forces in March 2013 and had been ill-treated at the time of his arrest.[651] Both had also arrived at the prison in late March. A Moroccan national (identified) who arrived in early April 2013 died at the prison on 12 April 2013. Another male detainee (identified) placed under a committal order on 18 January 2013 for conflict-related events died at the prison in May 2013.

388. The reasons for those deaths have not been fully established as a thorough investigation into the causes of death was not conducted at the time. However, they appear to be related to the medical state of the detainees on arrival in light of the conditions of their arrest and to the detention conditions at Bamako remand prison at that time. According to information obtained from human rights organizations that were able to visit the prison at the time, detention conditions were poor and did not meet international standards. Amnesty International found that, in the section of the prison where those detainees died, "the inmates were respectively 34 and 21 in two cells each five meters by five meters". The cells were not only overcrowded, but also very hot and poorly ventilated, according to the Human Rights and Protection Division of MINUSMA. A man held for a month in one of the cells where two detainees died said that the room had no windows and the metal door was always closed. Food was served but the inmates could not eat it because of the stifling heat of the room. There was no water in the cell and the showers had to be paid for. Following those deaths, an administrative investigation was

[648] Report of the Secretary-General on the situation in Mali (S/2013/582), 1 October 2013, para. 38. For an analysis of the situation of conflict-related detainees for the period January 2013 to June 2017, see the report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017) (French), February 2018, paras. 80-84.

[649] Another death in custody at Bamako remand prison in November 2013 was documented by the HRPD of MINUSMA. The detainee, who was of Tuareg origin, had been placed under a committal order on 2 February 2013 for reasons related to the conflict. He had stopped eating several days earlier. Confidential document of HRPD, MINUSMA. For other deaths in custody in other places of detention and at other times, see report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017) (French), February 2018, para. 81.

[650] See below, case No. CEI09.

[651] See below, case No. CEI24. See also AI, Mali: Preliminary findings of a four-week mission, 7 June 2013; Testimonies Nos. 370 and 365.

reportedly conducted, and the cell ventilation system improved. The inmates were also moved to another section of the prison where they were entitled to take walks more regularly.[652]

[652]Confidential documents of HRPD, MINUSMA; AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, pp. 18-19. AI, Agenda for human rights in Mali, November 2013, p. 18; Testimony No. 497.

Detention of children with adults at Bamako remand prison and gendarmerie camp No. 1

389. During the first six months of 2013, several boys, 13 of whom were between 13 and 17 years of age (identified), were arrested in connection with the conflict by the defence and security forces and/or the French forces of *Operation Serval*. According to testimonies obtained by the Commission and other organizations, many were ill-treated and/or injured during their arrest, transfer to Bamako or questioning.[653] They did not, however, report any ill-treatment during their detention in Bamako.

390. The children were detained with adults at gendarmerie camp No. 1 and at Bamako remand prison, some of them for several months, in violation of Malian law. According to the information gathered, they were reportedly brought before an investigating judge, who requested that they be transferred to specialized institutions. It appears that implementation of those instructions was very limited. On 1 July 2013, the Government of Mali and the United Nations system signed a protocol on the handover of children associated with armed forces or groups. Under that protocol, the gendarmerie undertook to hand any child transferred to it by the defence and security forces of Mali and/or their allies over to the National Directorate for the Advancement of Children and Families (DNPEF) and the United Nations Children's Fund (UNICEF), with immediate effect in Bamako and within 48 hours outside Bamako. Furthermore, the defence and security forces of Mali undertook both to hold any children taken into custody separately from adults and to devote particular attention to them until they were handed over to DNPEF and UNICEF.[654]

391. Despite the signing of the protocol and the advocacy of human rights organizations, in late August 2013, the Human Rights and Protection Division of MINUSMA still found that two 17-year-old boys were held in Bamako remand prison and six boys aged between 14 and 17 years in were held in gendarmerie camp No. I. The detention of five of them aged 15 to 17 years in gendarmerie camp No. 1 was still being denounced by Amnesty International in November 2013. They were eventually handed over to the competent authorities, released and/or reunited with their families.[655]

(B) From the signing of the Ouagadougou preliminary agreement to the signing of the Peace and Reconciliation Agreement (June 2013-June 2015)

392. On 18 June 2013, the Government of Mali signed the Ouagadougou preliminary agreement with MNLA and HCUA, which provided for a ceasefire and measures that would enable presidential elections to be held. The elections were held in July and August 2013 and the current President of the Republic, Ibrahim Boubacar Keïta, was elected.

393. The Ouagadougou preliminary agreement eased the security situation for a few months, but clashes resumed in May 2014 in the Kidal region. On 21 May 2014, the Government of Mali lost control of Kidal completely to the three armed groups MNLA, HCUA and MAA-CMA, which had united under the CMA banner. The pro-Government groups, including the recently established GATIA, had likewise

[653] AI, Mali: Preliminary findings of a four-week mission, 7 June 2013, p.20. AI, Press release, Malian authorities must release children detained in prison, 30 November 2013; Confidential document of HRPD, MINUSMA; Testimony No. 409.

[654] Protocol between the Government of the Republic of Mali and the United Nations system on the handover of children associated with armed forces and groups, 1 July 2013.

[655] CNDH, 2013 annual report, August 2014; Testimonies Nos. 354 and 409; Confidential document of HRPD, MINUSMA; AI, Press release, Malian authorities must release children detained in prison, 30 November 2013.

come together under the banner of the Plateforme. Clashes multiplied in the northern regions of Mali between the armed groups of CMA and those of the Plateforme, which were both striving to exert pressure and influence in the peace negotiations that had resumed under the auspices of the Government of Algeria. The Peace and Reconciliation Agreement was signed, despite some reluctance and obstacles, in Bamako in two stages, on 15 May and 20 June 2015.

394. Throughout the entire period, the extremist armed groups (MUJAO, Ansar Eddine, Al Mourabitoun and AQIM) were reorganizing to cope with the heavy losses and defections they had suffered as a result of the events of the first six months of 2013. Their rise in power was apparent from early 2015, when two of Ansar Eddine's fighting groups (the Macina katiba and the Gourma katiba) appeared in the regions of Mopti and Ségou. Their importance and influence in the area only grew from that point on.

395. MINUSMA, established by the Security Council on 25 April 2013 to replace the African-led International Support Mission in Mali (AFISMA**)**, deployed to Mali on 1 July 2013. MINUSMA peacekeepers quickly became the target of attacks by extremist armed groups. The French *Operation Serval* ended on 1 August 2014 and was transformed into *Operation Barkhane*, which operates in five countries in the Sahel-Saharan strip and whose main objective is to counter extremist armed groups.

1. Region of Kidal

i. 2013-2014 - Attacks against MINUSMA in the Kidal region

396. MINUSMA deployed to Mali on 1 July 2013 and gradually set up bases in the city of Kidal as well as in Tessalit and Aguelhok in the Kidal region.[656] Only a few months after its arrival, on 23 October 2013, MINUSMA suffered its first deadly attack, which occurred in the Kidal region. It is clear that the majority of the attacks against MINUSMA during the period took place in the Kidal region. The Commission documented four such cases attributable to AQIM or where the suspects were members of HCUA.

23 October 2013 - AQIM car bomb attack on a MINUSMA outpost in Tessalit[657]

397. At approximately 8 a.m. on 23 October 2013, four armed men (unidentified) in camouflage combat clothing and turbans arrived in the city centre of Tessalit, Kidal region, in a white Toyota 4X4 vehicle. Three individuals got out of the vehicle and asked people to hide in their homes. The fourth man then drove towards the former Governor's Office in Kidal, which served as an outpost for Chadian MINUSMA peacekeepers. Despite a number of warning shots, the vehicle continued on its path at high speed and exploded about five metres from the building, killing two Chadian peacekeepers and two 12-year-old boys who were playing nearby (all identified). The explosion seriously injured six Chadian soldiers and three Malian civilians, two men and an 11-year-old boy (all identified). At that moment, the three other assailants who had exited the vehicle earlier attacked the Chadian soldiers from other fronts. The first detonated his explosive belt at city hall, which served as sleeping quarters for Chadian soldiers, but did not cause any casualties. The other two assailants were killed by Chadian MINUSMA

[656] MINUSMA, military deployment maps for 2015 and 2018.

[657] Case No. CEI39.

soldiers during the fighting.[658] Although the bodies of the four assailants could not be identified, Abdou Aïssa, also known as Sultan Ould Badi, the leader of the Salah Eddine katiba of AQIM, claimed responsibility for the attack the same day.[659] On 20 October 2014, MINUSMA sent a note verbale to the Malian authorities requesting information on the actions taken by the Government to investigate the attack or prosecute the perpetrators. MINUSMA informed the Commission that it has not received a response from the Malian authorities to date.[660]

14 December 2013: Car bomb attack against the Senegalese contingent of MINUSMA and the soldiers of the Malian Armed Forces positioned in front of Banque Malienne de Solidarité in Kidal[661]

398. At around 6.30 a.m. on 14 December 2013, an unidentified individual drove a Toyota vehicle containing more than 110 kg of explosives at high speed towards Banque Malienne de Solidarité (BMS) in the city centre of Kidal. BMS had just reopened a few weeks earlier, and it was guarded jointly by the Malian Armed Forces and a detachment of the Senegalese battalion of MINUSMA. The assailant's vehicle exploded at the bank, causing the building to collapse, killing two peacekeepers from the Senegalese battalion of MINUSMA (identified) and seriously injuring seven other Senegalese soldiers (identified) and four soldiers of the Malian Armed Forces who were resting near the bank.[662] Abdou Aïssa, also known as Sultan Ould Badi, the leader of the Salah Eddine katiba of AQIM, claimed responsibility for the attack the same day.[663] On 9 June 2014, MINUSMA sent a note verbale to the Malian authorities requesting information on the actions taken by the Government to investigate the attack or prosecute the perpetrators. MINUSMA informed the Commission that it has not received a response from the Malian authorities to date.[664]

7 October 2014 - Mortar attack against the MINUSMA camp in Kidal[665]

399. At approximately 5.30 p.m. on 7 October 2014, individuals (the exact number of whom could not be established) fired six 81mm mortar bombs at the military camp in Kidal where MINUSMA peacekeepers and French soldiers of *Operation Barkhane* were stationed. Five of the bombs hit the section of the camp housing the Senegalese battalion of MINUSMA, killing one person and wounding three others (all identified), while the sixth bomb hit the French section of the camp without causing any casualties. Three individuals suspected of participating in the attack were arrested by French

[658] Confidential documents of MINUSMA. See also report of the Independent Expert on the situation of human rights in Mali, Suliman Baldo (A/HRC/25/72), 10 January 2014, para. 52.

[659] Jeune Afrique, Mali : l'attentat de Tessalit revendiqué par un groupe proche d'AQMI, 24 October 2013; Maliactu.net, Mali : un petit groupe lié à Al-Qaïda revendique l'attaque à Tessalit, 23 October 2013. See also MNLA, Attentat suicide à Tessalit, 23 October 2013.

[660] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[661] Case No. CEI40.

[662] Confidential documents of MINUSMA. See also MINUSMA, La MINUSMA condamne fermement l'attentat à la voiture piégée contre les troupes à Kidal, 14 December 2013.

[663] Confidential documents of MINUSMA. See also Le Parisien, Mali: l'attentat contre les soldats de l'ONU revendiqué par un jihadiste du MUJAO, 14 December 2013; Jeune Afrique, Mali : l'attentat de Tessalit revendiqué par un groupe proche d'AQMI, 24 October 2013; Maliactu.net, Mali : un petit groupe lié à Al-Qaïda revendique l'attaque à Tessalit, 23 October 2013.

[664] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[665] Case No. CEI41.

soldiers of *Operation Barkhane*.[666] A MINUSMA contractual worker was one of the suspects, while the other two were members of HCUA. The three men were handed over to the Malian judicial authorities.[667] On 20 October 2014, MINUSMA sent a note verbale to the Malian authorities requesting information on the actions taken by the Government to investigate the attack or prosecute the perpetrators. MINUSMA informed the Commission that it has not received a response from the Malian authorities to date.[668]

18 December 2014 - Destruction of a vehicle of the Chadian battalion by an anti-tank mine in the centre of Aguelhok[669]

400. At around 7 a.m. on 18 December 2014, a MINUSMA vehicle that was delivering supplies to the MINUSMA observation outpost located approximately 2 km south of Aguelhok camp exploded when it hit an anti-tank mine laid by unknown persons earlier that night, seriously injuring the three Chadian peacekeepers in the vehicle. Immediately after the attack, soldiers from the Chadian battalion arrested two HCUA members whom they suspected of being accomplices of the attackers. A significant amount of weapons, grenades and anti-personnel mines was found in the homes of those individuals.[670] The Commission asked MINUSMA what measures it had taken to follow up on the investigation into and the prosecution of the perpetrators of the attack by the Malian authorities, but the Mission was unable to provide the Commission with any information.[671]

ii. 28 November 2013 - Repression of a demonstration by soldiers of the Malian Armed Forces at Kidal Airport, as a result of which one woman died and several people sustained gunshot wounds[672]

401. Despite the signing of the Ouagadougou preliminary agreement, relations between the inhabitants of Kidal and the Government of Mali remained strained, and incidents occurred as a result. One such incident took place during the visit to Kidal of a ministerial delegation led by the then Prime Minister of Mali, Mr. Oumar Tatam Ly, on 28 November 2013. The visit, which had been planned by the Government and the other signatories of the Ouagadougou preliminary agreement (MNLA and HCUA), was intended to mark an important stage in the implementation of the agreement and the official return of the Malian political authorities to the Kidal region for the first time since the crisis began in 2012.

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[666] Confidential documents of MINUSMA.

[667] Confidential documents of MINUSMA and HRPD, MINUSMA. See also Malijet, L’un des trois individus arrêtés à Kidal est un contractuel de la MINUSMA, 19 October 2014.

[668] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[669] Case No. CEI42.

[670] Confidential documents of MINUSMA. See also Malijet, Press release, La MINUSMA appréhende deux individus à Aguelhok suite à une attaque à l’engin explosif, 18 December 2014.

[671] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General for Mali and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[672] Case No. CEI43.

402. However, on the morning of 28 November 2013, around 100 MNLA militants and sympathizers, mostly women and young people, including children, took over the runway at Kidal Airport to protest against the Prime Minister's visit. Between 7 a.m. and 9 a.m., in accordance with the security plan drawn up the previous day, the formed police unit of MINUSMA, which consisted of Senegalese and Togolese contingents, deployed to secure the runway. There was tension between the demonstrators and the members of the unit. Stones were thrown at the MINUSMA force, injuring at least one of them in the head, and demonstrators directed insults at them as they attempted to secure the area. The formed police unit of MINUSMA was successful in its efforts to contain the demonstration.[673]

403. Around 9.30 a.m., the Head of the MINUSMA office in Kidal informed the demonstrators that the ministerial delegation's visit had been cancelled. A few minutes later, soldiers of the Malian Armed Forces, under the command of a colonel (identified), arrived in five or six pick-up vehicles. When the demonstrators threw stones at them, several soldiers of the Malian Armed Forces retaliated by throwing stones at the demonstrators.[674] According to corroborating information from a number of credible witnesses at the scene, soldiers of the Malian Armed Forces (unidentified) fired live ammunition into the air and then towards the demonstrators for five minutes.[675] Information collected from the MINUSMA personnel present indicated that the colonel in command of the soldiers of the Malian Armed Forces that day remained in his vehicle while his soldiers opened fire, without intervening to stop them.[676]

404. Investigations carried out by MINUSMA after the incident confirmed the presence of bullet strikes (at least seven) showing horizontal and ground-level shots towards the crowd of demonstrators and bloodstains on the walls where the demonstrators had attempted to take cover. According to the investigation conducted by UNPOL regarding five casings found at the scene, the weapons used were AK-47s.[677] Although the demonstrators used stones against the soldiers of the Malian Armed Forces present at the scene, there is no evidence that they were armed.

405. When the soldiers opened fire, the panicked demonstrators dispersed. At least two women and two young men (all identified) sustained gunshot wounds as they fled.[678] One young man was shot in the arm and the other in the cheekbone. The two women sustained serious injuries to their chest and hips, respectively. Owing to the severity of their injuries, the two women were evacuated to Bamako, where one of them died on 4 December 2013.[679]

406. According to direct testimony obtained by the Commission, the commanding officer of the Malian Armed Forces who was present at the airport that day was questioned by his superiors about the incident immediately afterwards. He reportedly indicated to his superiors that he had not witnessed any shooting because he had been exfiltrated by one of his men and had thought he was being targeted by

[673] Confidential report of HRPD, MINUSMA. Interview with a witness conducted by HRPD, MINUSMA; Testimony No. 416; Report of women and young people of Azawad on "the scandal of 28/11/2013 in Kidal".

[674] Confidential document of HRPD, MINUSMA. See also testimony No. 517.

[675] A video recording also showed sustained firing by the Malian Armed Forces lasting at least 30 seconds and people shouting. However, owing to the poor quality of the footage, the shooters cannot be identified. Confidential report of HRPD, MINUSMA.

[676] Confidential report of HRPD, MINUSMA; See also testimony No. 517.

[677] Confidential report of HRPD, MINUSMA.

[678] Report of women and young people of Azawad on "the scandal of 28/11/2013 in Kidal".

[679] Confidential report of HRPD, MINUSMA; Interview with a witness conducted by HRPD, MINUSMA; Testimonies Nos. 415 and 416.

a sniper. According to a reliable source, the commanding officer and the soldiers under his responsibility were immediately relieved of their duties in Kidal and recalled to Bamako. Following a nine-month internal investigation by the Army, the commanding officer in question was reinstated, because the investigation had concluded that the weapon used against the deceased woman was not of a calibre used by the Malian Army.[680] That information is contradicted by the testimonies gathered and by the investigations conducted by MINUSMA immediately afterwards on the calibre of weapon used.

407. Based on its investigations, the Commission has reasonable grounds to believe that, on 28 November 2013, soldiers of the Malian Armed Forces opened fire on unarmed MNLA militants and sympathizers, mostly women and young people, including children, at the airport in the city of Kidal, killing one person and injuring at least three others. Besides the disciplinary proceedings initiated, the Commission has still not received specific information about the legal proceedings brought against the soldiers of the Malian Armed Forces who committed those abuses.[681] Furthermore, apart from a sum of 500,000 CFA francs that was reportedly paid by the Army's welfare services to the victim who had been transferred to Bamako, according to the information available to the Commission, the Malian authorities have not paid or offered any form of compensation to the other victims or made any attempt at conciliation.[682]

iii. 16, 17 and 21 May 2014 - Visit of the Prime Minister to Kidal, capture of the Governor's Office by MNLA and clashes in the city of Kidal[683]

408. Following his appointment as Prime Minister on 5 April 2014, Moussa Mara wished to visit the regions, in particular the Kidal region.[684] As in the case of his predecessor, the announcement of his visit provoked a strong reaction in Kidal and resulted in a number of incidents between 16 and 21 May 2014 that fell within the Commission's mandate.

16 May 2014 - Demonstration at Kidal Airport against the Prime Minister's visit

409. Although the Prime Minister's visit was not scheduled to take place until the following day, tensions were already extremely high in Kidal on 16 May 2014. That morning, between 100 and 200 demonstrators, mostly women and young people, were at the airport protesting violently against the arrival of Soumeylou Boubèye Maïga, Minister of Defence, in preparation for the Prime Minister's visit. In view of the demonstration, he finally abandoned the attempt to land. Deployed with members of *Operation Serval* to secure the runway, the MINUSMA formed police were confronted by a hostile crowd throwing stones and Molotov cocktails that shattered the windows of MINUSMA vehicles.[685]

[680] Confidential report of HRPD, MINUSMA. See also testimony No. 517.

[681] Note verbale dated 12 March 2020 addressed to the Minister of Justice of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice of Mali. Both remain unanswered to this day.

[682] Confidential report of HRPD, MINUSMA; Testimony No. 517.

[683] Case No. CEI44.

[684] RFI, Moussa Mara à Kidal: retour sur une visite mouvementée, 21 May 2014.

[685] Confidential report of HRPD, MINUSMA; Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, paras. 37-39. See also confidential testimony of HRPD, MINUSMA. Testimony No. 469.

The MINUSMA formed police retaliated, using tear gas, plastic bullets and gas guns to disperse the crowd. The demonstration started at dawn and ended at nightfall, at around 6 p.m.[686]

410. At least seven people sustained minor injuries during the demonstration, including four children (unidentified).[687] According to a medical source, one of the victims burned themselves while handling a Molotov cocktail, three others were hit by stones thrown by demonstrators, two were injured by tear gas and one person was knocked down by a MINUSMA vehicle.[688] There were also injuries on the MINUSMA side, including bruising from projectiles thrown by the demonstrators.[689]

411. The same day, MNLA accused the Malian Army of having "fired live ammunition at peaceful demonstrators" and the international forces of having "used disproportionate force against peaceful citizens". In a joint report published on 25 June 2014, MNLA and HCUA repeated those accusations, stating that "in front of MINUSMA, the Malian Army opened fire on the population in the late afternoon, wounding several people".[690] One witness interviewed by the Commission referred to "the presence of about 30 Malian soldiers accompanied by two Chadian soldiers from MINUSMA" who reportedly, after using tear gas, "opened fire with live ammunition, first into the air and then towards the crowd of demonstrators", injuring four people.[691] Another witness present at the scene said that he had not witnessed the use of firearms by the Malian Armed Forces, "only those injured by stones and tear gas".[692] A MINUSMA official who was at Kidal Airport that day said that he did hear shots in the late afternoon after the demonstration, but that "when he went to the scene [...] there were no bodies around the airport".[693] In addition, medical sources make no mention of anyone treated for gunshot wounds that day, and the information received from a number of sections of MINUSMA (HRPD and UNPOL) contains no reference to any incidents involving the use of firearms by the Malian Armed Forces that day. The Commission is therefore not in a position to confirm the allegation that soldiers of the Malian Armed Forces used disproportionate force that day.

17 May 2014 - Attack on the Governor's Office in Kidal by MNLA

412. The next day, 17 May 2014, as early as 8 a.m., the situation was tense, as members of MNLA, positioned at the francophone high school in Kidal, and the Malian Armed Forces, positioned at the

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[686] Testimony No. 469.

[687] Confidential report of HRPD, MINUSMA; Report of MNLA and HCUA representatives on the joint technical security commission established pursuant to article 7 of the agreement of 18 June 2013 signed in Ouagadougou concerning the events that took place in Kidal on 17 and 21 May 2014. MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, paras. 37-39.

[688] Confidential report of HRPD, MINUSMA. See also testimonies Nos. 417 and 416; MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French) December 2015, paras. 37-39. See also testimony No. 469.

[689] Testimony No. 469.

[690] MNLA, Manifestation populaire à Kidal contre l'arrivée du premier ministre malien et graves violations à l'encontre des manifestants, 16 May 2014; Report of MNLA and HCUA representatives on the joint technical security commission established pursuant to article 7 of the agreement of 18 June 2013 signed in Ouagadougou concerning the events that took place in Kidal on 17 and 21 May 2014. See also testimony No. 536.

[691] Testimony No. 417.

[692] Testimony No. 416.

[693] Testimony No. 469.

Governor's Office, started exchanging fire.[694] Around 12.30 p.m., the helicopter carrying the Prime Minister, several ministers and the Chief of Defence Staff, landed at the MINUSMA compound, since demonstrators had occupied the runway at Kidal Airport.[695] After visiting the Malian Armed Forces camp, the delegation went to the Governor's Office under the escort of Malian Armed Forces soldiers. The Prime Minister spent about 30 minutes attending scheduled meetings at the Governor's Office, while fighting continued outside the building, and left around 4.30 p.m. According to government sources, two bodyguards of the ministerial convoy were reportedly hit by bullets from armed groups as the convoy left the building. One of the guards was reportedly killed on the spot, while the other was wounded in the leg.[696]

413. Fighting between MNLA and the Malian Armed Forces intensified rapidly after the Prime Minister's departure. The Malian Armed Forces contingent that remained in the Governor's Office first tried to protect the building and the 40 or so civilians inside. However, after MNLA fighters destroyed their armoured vehicle parked in front of the Governor's Office, killing the three (identified) Malian Armed Forces soldiers inside, the Malian Armed Forces decided to withdraw from the Governor's Office, leaving the civilians behind.[697] According to witnesses interviewed by the Human Rights and Protection Division of MINUSMA, whom the Commission considers credible and reliable after detailed analysis, the Malian Armed Forces soldiers had taken their weapons with them and the people who remained at the Governor's Office did not appear to be armed.[698]

414. Eight men were shot dead by MNLA fighters during the capture of the Governor's Office: the sub-prefect of Tin Essako, the deputy prefect of Tessalit, the sub-prefect of Tin-Zawaten, the prefect of Kidal, the deputy prefect of Kidal, the sub-prefect of Boureissa, the prefect of Abeibara (identified), a journalist (unidentified) and an administrative officer (unidentified), all in civilian or official civilian attire.[699] Five other people (including at least one sub-prefect) were shot and seriously wounded as they tried to flee.[700]

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[694] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 40. According to the Malian authorities, it was MNLA that started the hostilities by attacking the Governor's Office at the time of the Prime Minister's visit. According to MNLA, it was the Malian Armed Forces that opened fire from the Governor's Office against the nearest MNLA positions in the morning. MNLA, Press release, Violent fighting in Kidal between Azawad forces and the Malian Army, 17 May 2014; Report of MNLA and HCUA representatives on the joint technical security commission established pursuant to article 7 of the agreement of 18 June 2013 signed in Ouagadougou concerning the events that took place in Kidal on 17 and 21 May 2014). According to MINUSMA and other witnesses, shots were heard in the town as early as 8 a.m., but it was impossible to determine the source of those shots.

[695] Confidential report of HRPD, MINUSMA.

[696] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the event of Kidal on 16, 17 and 21 May 2014 (French), December 2015 paras. 41-42. Confidential report of HRPD, MINUSMA.

[697] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), paras. 43-45. Confidential documents of HRPD, MINUSMA.

[698] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), para. 44.

[699] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 45-58. See also Afribone, Kidal, le fil des événements, 20 May 2014.

[700] Confidential documents of HRPD, MINUSMA. MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), paras. 50-51; Testimony No. 416.

415. According to two witnesses interviewed by the Human Rights and Protection Division of MINUSMA, when the MNLA soldiers arrived inside the compound of the Governor's Office, they shot three people (an administrative officer, a journalist and a deputy prefect) who were trying to flee.[701] Two other people, who were in the corridor leading to the Governor's suite, were shot and wounded, at a time when they were unarmed and were trying to flee. A group of three assailants then headed towards the Governor's suite, where three prefects, a sub-prefect, a secretary and a deputy prefect were lying on the ground. According to three witnesses, once they entered the suite, the gunmen began firing at the six government officials at point blank range. The witnesses indicated that the officials were wearing their official attire and were unarmed. Four of them were killed and two - including one who was seriously injured - survived.[702] Following a visit to the site with the Human Rights and Protection Division, a ballistics expert concluded that the ballistics evidence found on the scene could be consistent with those testimonies and with the fact that the victims were actually lying on the ground at the time of their death or injury. In general, the ballistics expert noted that the shots were highly inaccurate, suggesting that the shooters were untrained, or that they were in a state of extreme panic, or both.[703] The body of another prefect was found in the Governor's Office, but the Human Rights and Protection Division of MINUSMA was unable to establish the exact circumstances of his death. However, the traces of blood found on the floor indicate that, after being shot, the victim attempted to hide in the toilet, but then succumbed to his injuries.[704]

416. A few days after the events, MNLA stated in a press release that the officials killed at the Governor's Office had been killed during the clashes.[705] When questioned on that point, a representative of MNLA confirmed that version of events, stating that the men killed at the Governor's Office were professional administrators who were also members of the Malian Army. The representative also said that they had been killed by shots fired from a distance by MNLA or by "friendly fire" from the Malian Armed Forces during the fighting, but that no member of MNLA had entered the Governor's Office with the intention of killing the people there.[706] As detailed above, the evidence analysed by the Commission directly contradicts that version of events. Based on the evidence gathered, including during the investigation conducted by the Human Rights and Protection Division of MINUSMA, the Commission can conclude, in accordance with the required standard of proof, that the eight men killed and the five others seriously wounded during the capture of the Governor's Office were killed at a time when they were not participating in the hostilities, either because they were not members of the Armed Forces, or because they were hors de combat.

417. In addition, 34 (identified) men, administrative and military personnel assigned to protect the Governor's Office, who were unable to flee before or during the assault, were held in several places of

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[701] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 46.

[702] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, paras. 50-55. Confidential report of HRPD, MINUSMA.

[703] See also confidential document of HRPD, MINUSMA.

[704] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 56.

[705] MNLA, Press release, Réaction du MNLA liée aux événements du 17 Mai 2014 de Kidal, 26 May 2014. See also MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 71.

[706] Testimony No. 365.

detention in the city of Kidal by CMA armed groups. One of them who was wounded was taken to the hospital at the request of MNLA. The others were released 48 hours later, on 19 May 2014, following mediation by MINUSMA.[707] According to an interview conducted by the Human Rights and Protection Division of MINUSMA at the time of the events, one of the detainees claimed "to have been hit on the head with rifle butts and kicked in the chest at the time of his transfer". Before arriving at the place of detention, he and five other detainees were taken to a small house and forced to lie on the ground. They were then allegedly trampled on by armed persons - in all likelihood children, because of their physical stature - before returning to the vehicle to be taken to their place of detention.[708] The Human Rights and Protection Division of MINUSMA also reports that it documented cases of theft and destruction of property (the possessions of arrested persons and government offices) committed by members of the armed groups MNLA and MAA-CMA (which reportedly joined MNLA after the capture of the Governor's Office) and by some members of the civilian population.[709]

418. As to the responsibility for the attack, the Commission notes that MNLA, HCUA and MAA-CMA were all present in the city of Kidal at the time of the events and that they issued a joint press release stating that they had reacted "in self-defence during the events of 17 May 2014 in Kidal".[710] However, MAA and HCUA subsequently denied participating in the assault on the Governor's Office.[711] In the course of its investigation, the Human Rights and Protection Division of MINUSMA also collected several testimonies as to the involvement of members of extremist armed groups in the attack on the Governor's Office.[712] That possibility was also raised by Prime Minister Moussa Mara in an interview with RFI.[713] While the involvement of other armed groups besides MNLA in the attack on the Governor's Office cannot be ruled out, the Commission does not have sufficient evidence to establish their responsibility in the attack, in accordance with its standard. On the contrary, the Commission considers that the responsibility of MNLA for the attack on the Governor's Office on 17 May 2014 is not disputed, including by the group itself.[714] In that context and in the light of the

[707] Interview conducted by HRPD, MINUSMA; Report of MNLA and HCUA representatives on the joint technical security commission established pursuant to article 7 of the agreement of 18 June 2013 signed in Ouagadougou concerning the events that took place in Kidal on 17 and 21 May 2014; MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 59.

[708] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), para. 60.

[709] Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014, December 2015 (in French), paras. 68, 74; Confidential documents of HRPD, MINUSMA.

[710] MAA, HCUA and MNLA, Joint communiqué of the Azawad movements, 19 May 2014.

[711] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 70-74. Malijet, Kidal : le MAA dément toute participation aux violences contre la délégation du Premier ministre, 27 May 2014; Report of MNLA and HCUA representatives on the joint technical security commission established pursuant to article 7 of the agreement of 18 June 2013 signed in Ouagadougou, concerning the events that took place in Kidal on 17 and 21 May 2014 (which only mentions MNLA in relation to the events of 17 May 2014); testimony No. 511.

[712] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 75.

[713] RFI Afrique, Moussa Mara: “L’attaque de Kidal est une déclaration de guerre”, 19 May 2014.

[714] MNLA, Violents combats à Kidal entre les forces de l’Azawad et l’armée malienne, 17 May 2014; MNLA, Le gouvernorat de Kidal passe sous contrôle des forces de l’Azawad, 17 May 2014; MNLA, Bilan humain des combats du 17 mai à Kidal, 18 May 2014; MNLA, Statement by Mr. Bilal Ag Achérif, Secretary General of MNLA and President of CTEA, 19 June 2014; MNLA, Libération des prisonniers de guerre arrêtés lors des combats du 17 mai 2014 à Kidal, 19 May 2014.

corroborating evidence at its disposal, the Commission has reasonable grounds to believe that, on 17 May 2014, (unidentified) members of MNLA killed at least eight people and seriously wounded five others that were not participating in the hostilities.

Presence of children in the ranks of MNLA and HCUA

419. During the investigations conducted by the Human Rights and Protection Division of MINUSMA at the time of the incident, several witnesses said that boys had been present in the ranks of MNLA during the attack on the Governor's Office. At least five people present during the capture of the Governor's Office had identified armed boys, some of whom they estimated to be between 13 and 16 years of age, and some of whom used their weapons during the MNLA assault.[715]

420. The testimonies collected also show that children had been involved in the transport and custody of detainees, in particular by HCUA, following the capture of the Governor's Office by MNLA. Two of the detainees testified that the guards at the place of detention had included children estimated to be between 14 and 17 years of age. One witness stated that the children, dressed in civilian clothes and heavily armed, reported to leaders at the HCUA camp.[716]

421. When questioned on that point, a representative of CMA, member of MNLA, present in Kidal on the day of the events, confirmed that children had been present alongside fighters, but insisted that the children had not fought or served as guards for prisoners. According to him, the children present were the fighters' dependents who had accompanied the fighters in order to avoid being recruited by rival groups.[717] The Commission was not convinced by that explanation. Indeed, although it can sometimes be difficult to estimate a person's age, the Commission received a significant number of credible and consistent testimonies attesting to the involvement of children in the attack on the Governor's Office and in places of detention. In conclusion, the Commission considers that there are reasonable grounds to believe that MNLA used children during the capture of the Governor's Office on 17 May 2014, and that HCUA used armed children to transport and guard detainees after the attack on the Governor's Office.

21 May 2014 - Attack on the city of Kidal by the Malian Armed Forces

422. The Prime Minister left Kidal on the morning of 18 May 2014, but the situation in the city remained extremely tense. The commander of the MINUSMA force, Rwandan General Jean-Bosco Kazura, facilitated the negotiation of a shaky ceasefire between the parties that lasted until 21 May 2014.[718] That day, shortly before 10 a.m., the Malian Armed Forces launched a counter-offensive against MNLA and HCUA positions in an attempt to regain control of the city of Kidal. Armed group forces composed of members of MNLA, HCUA and MAA-CMA responded. The clashes between the two sides lasted until approximately 3 p.m., after which the armed groups managed to take control of

[715] Confidential documents of HRPD, MINUSMA.

[716] Confidential interviews by HRPD, MINUSMA.

[717] Testimony No. 511; see also testimony No. 536.

[718] RFI, Mali : à Kidal, la tension loin d'être retombée, 19 May 2014.

the Malian Army's camp No. 1 and the entire city of Kidal. The Malian Armed Forces soldiers were forced to abandon their positions.[719]

423. According to information collected from several corroborating sources, the Malian Armed Forces used BM-21 rockets during the attack on the city of Kidal. At least eight of those rockets were fired from three positions on the outskirts of the city of Kidal, destroying at least six civilian homes that were partly occupied by civilians, as well as the Kidal health centre. The Commission notes that, with the use of that type of rocket, it was impossible to target specific and set objectives and to distinguish between civilian and military infrastructure[720]in the city of Kidal. According to investigations by the Human Rights and Protection Division, the Malian Armed Forces also fired at least two 73 mm rockets that hit civilian homes, injuring two people, and one from rocket launcher (RPG) that partially destroyed the building of a civil society organization.[721]

424. Fighting in Kidal also caused more than 3,000 households to flee the city, out of fear for their lives.

[719]MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015; Testimony No. 469.

[720]MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 85; Confidential documents of HRPD, MINUSMA; Testimony No. 469. At least five members of armed groups were injured and cared for by MINUSMA - one of them died of his injuries. According to information gathered by HRPD, MINUSMA, there is no evidence that the soldiers or members of armed groups were killed when they were "hors de combat". The Commission was also able to confirm that there were no civilian casualties among the population during the fighting. The bodies of Malian Armed Forces soldiers found in the city of Kidal were buried by MINUSMA soldiers near the MINUSMA camp and the prisoners of the Malian Armed Forces were released after several weeks of detention. The information received suggests that the prisoners were not mistreated and that their conditions of detention were consistent with humanitarian law.

[721]MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para.85.

Impact of the Kidal events of May 2014

425. The events that took place in Kidal on 17 and 21 May 2014 have had a considerable political and security impact on the situation in Mali. Between the dates of that event and 13 February 2020, the defence and security forces (police and military) had no presence in the city of Kidal.[722]

426. The capture of the city on 21 May 2014 by armed groups also led to the capture of several other localities between 21 and 23 May 2014 in the regions of Kidal (Aguelhok), Gao (Ménaka, Djebock, Intilit, Talataye, Tessit, Tin Hama and Tamkoutat), Timbuktu (the locality of Ber in the Lake Faguibine area, all the way to the Algerian border) and Mopti (village of Boulikessi). On 23 May 2014, the Government of Mali and CMA signed a cessation of hostilities agreement.

Administrative and judicial response

427. On 2 June 2014, the National Assembly set up a parliamentary commission of inquiry to shed light on the events that took place in Kidal in May 2014.[723] According to publicly available information, the recommendations contained in that commission's report were aimed mainly at Malian political and military leaders, including: (1) the opening of a judicial inquiry against Moussa Mara, in his capacity as Prime Minister and Head of Government; (2) the opening of a judicial inquiry against the Chief of Defence Staff, General Mahamane Touré; and (3) the opening of a judicial inquiry (under certain conditions) against the Minister of Defence, Soumeylou Boubèye Maiga.[724] The Commission requested a full copy of that report from the Malian authorities, but had not received a reply by the date of publication of the present report.

428. In its public report, the Human Rights and Protection Division of MINUSMA stated that it had appealed to the Malian authorities and the armed groups to publicly and officially clarify the circumstances of the events in Kida, and to ensure that those responsible for the abuses committed were brought to justice.[725] Despite those appeals and its requests to the Malian authorities, the Commission has still not been able to confirm whether any investigations or legal proceedings have been initiated in connection with those events.

2. Region of Timbuku

429. During the period concerned, the intensity of the fighting dropped significantly in Timbuktu as well as in the other regions of Northern Mali. The Malian Armed Forces gradually redeployed to the Timbuktu region, continuing – albeit with less intensity – to arrest and detain members of the Tuareg and Arab communities suspected of collaborating with the armed groups. MINUSMA set up bases in Timbuktu, Goundam and Ber, while the French forces continued their campaign of targeted operations against the extremist armed groups. Severely diminished, those groups adopted a strategy of targeting

[722] Jeune Afrique, Mali : les coulisses du retour à Kidal de l'armée reconstituée, 13 February 2020; testimony No. 469.

[723] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 104.

[724] InfoMatin, Conclusion de la commission d'enquête, 19 May 2016; Le Matinal, Commission d'enquête parlementaire sur la visite du premier ministre Moussa Mara à Kidal : Boubeye pas formellement accusé L'ancien PM épinglé, 24 May 2016.

[725] MINUSMA and OHCHR, Joint report on violations of human rights and international humanitarian law committed during the events of Kidal on 16, 17 and 21 May 2014 (French), December 2015, para. 109.

the Malian and international armed forces and people accused of cooperating with them. The period was also marked by mounting tensions between MNLA and MAA, and then between MAA-CMA and MAA-Plateforme, against a backdrop of inter-communal rivalries.

i. October 2014 to March 2015 - Kidnapping and execution of civilians suspected of collaborating with the French forces by AQIM in Zouéra and Tichift[726]

430. Back in hiding, the extremist armed groups maintained the pressure on the civilian population in the areas where they had taken refuge. In particular, they attacked all those suspected of cooperating with the international forces and the Malian Armed Forces. They did not hesitate to decapitate their victims and place their heads in the markets of the region, in order to terrorize all those who might be tempted to cooperate with those forces.

431. The Commission thus has reasonable grounds to believe that, in mid-September 2014, five Arab and Songhaï men (most of them identified) were abducted in the village of Zouéra (Essakane commune, Goundam cercle) by members of AQIM. Four of the abducted men were later released, but the fifth man (identified), suspected by AQIM of being an informant for the Malian Armed Forces and the French forces, was beheaded, and his head was deposited in a market in Zouéra a few days later.[727]

432. On 19 March 2015, AQIM fighters arrested a Tuareg man (identified) at the cattle market in the locality of Tichift, 120 km north of Timbuktu. Accused of working for the French forces, the victim was shot and then decapitated in front of the people at the market, to dissuade them from cooperating with the international forces.[728] After committing their abuses, the members of AQIM circulated a communiqué threatening all those who might be tempted to work or cooperate with the foreign forces against the group.[729]

ii. 31 July 2014 - Rape of a 16-year-old girl by a Malian Armed Forces soldier in Timbuktu[730]

433. On 31 July 2014, a 16-year-old girl (identified) was forcibly taken by Malian Armed Forces soldiers into the bedroom of a house where they were staying in the city of Timbuktu, where one of the soldiers (identified) beat and raped her at knifepoint. The young girl lost consciousness during the rape. She was later released by the said soldier and was then taken to the gendarmerie, where she was checked by a doctor, who confirmed the facts after conducting a medical examination.[731]

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[726] Case No. CEI 45.

[727] Confidential document of HRPD, MINUSMA; Testimony No. 515; Report of the Secretary-General on the situation in Mali (S/2014/943), 23 December 2014, para. 29; See also RFI, Mali: un Touareg décapité, Aqmi mis en cause, 24 September 2014.

[728] Jeune Afrique, Mali : en plein marché, Aqmi décapite un homme accusé de travailler pour les Français, 23 March 2015; HRW, Mali: Lawlessness, abuses imperil population, 14 April 2015.

[729] Ladepeche.fr, Mali: Aqmi décapite un civil malien accusé de travailler pour la France, 22 mars 2015; See other similar case of execution by members of AQIM for "spying for France", Info-Mali,Al-Qaïda dit avoir tuédeux hommes suspectés d'être des espions pour la France au Mali, 28 November 2015.

[730] Case No. CEI 100.

[731] Confidential document of HRPD, MINUSMA; Testimony No. 339 and documents from the witness; Report of the Independent Expert on the situation of human rights in Mali, Suliman Baldo (A/HRC/28/83), 9 January 2015, para. 60; See also Maliweb.net, Tombouctou: une fille de 13 ans violée par deux militaires maliens, 4 August 2014; Malijet, Au quartier Badjindé de Tombouctou : deux soldats maliens violent une mineure de 15 ans, 19 August 2014.

434. The victim's father filed a complaint with the Timbuktu military police and, according to some publications, the perpetrator was arrested.[732] However, the Commission has reasonable grounds to believe that no legal proceedings were instituted against the alleged perpetrator. According to credible and reliable testimonies obtained by the Commission from judicial sources, a judicial inquiry was opened, but the Ministry of Defence did not give the judiciary access to the alleged perpetrator, despite a request by the judge to that effect.[733]

iii. 14 November 2014 - Abuses and detentions attributable to members of MAA-Plateforme in Zarho[734]

435. MAA, which was formed to defend the interests of the Arab populations of northern Mali, clashed with MNLA on several occasions in 2013, against a backdrop of mounting tensions between the Tuareg and Arab populations in the north of the country. On 21 April 2013, MAA attacked and chased MNLA out of the city of Ber, only to abandon it a few weeks later.[735] In September 2013, MAA split into two groups: the first, composed mainly of Kounta Arabs, joined CMA (MAA-CMA), while the other, comprising Lemhar and Berabic Arabs, joined the Plateforme (MAA-Plateforme).[736]

436. On 14 November 2014, members of the Arab community of Oulade Ganam, reputed for being pro-CMA, living in the village of Zarho (Ber commune, Timbuktu cercle), were attacked by armed men, presumed to belong to MAA-Plateforme. The motive for that attack remains unclear. The testimonies gathered by the Commission point not only to tensions related to the conflict between CMA and the Plateforme, but also to drug trafficking. During that attack, armed men of MAA-Plateforme pillaged and burned the properties of the Arab community of Oulade Ganam. Around 200 Arab families were forced to flee the violence, and four men (some of whom were identified) were arrested by the assailants. The men were held for almost four months in a cell run by MAA-Plateforme and were hospitalized for one week for psychological disorders apparently related to prolonged deprivation of light.[737] The name of the MAA-Plateforme superior is provided in a confidential annex.

iv. Late April 2015 - One child killed and six civilians wounded (including three children) by members of CMA in Léré and Goundam[738]

437. In early 2015, as peace negotiations stalled in Algiers, clashes between CMA, the Malian Armed Forces and several pro-Government armed groups broke out in the Timbuktu region. In particular, at

[732] Confidential document of HRPD, MINUSMA; see also Malijet, Au quartier Badjindé de Tombouctou : deux soldats maliens violent une mineure de 15 ans, 19 août 2014.

[733] Confidential document of HRPD, MINUSMA; See also, Malijet, Le colonel Kéba Sangaré, à propos du viol d’une fillette par un militaire à Tombouctou: “Le soldat a agi seul et purge déjà sa sanction militaire”, 13 August 2014; Bamada.net, Accusation de viol sur une fillette par un militaire à Tombouctou : le jeune soldant sans défense !, 12 August 2014.

[734] Case No. CEI 46.

[735] Report of the Secretary-General on the situation in Mali (S/2013/338), 10 June 2013, para. 20; RFI, Mali: vives tensions entre Arabes et Touaregs au nord de Tombouct‌o, 5 May 2013.

[736] See the section on the main actors in the conflict.

[737] Confidential documents of HRPD, MINUSMA; Testimony No. 339; See also StudioTamani, Tombouctou : six arabes séquestrés par des hommes armes ont été libérés, 11 February 2015.

[738] Case No. CEI 47.

the end of April 2015, intense fighting pitted CMA against the Malian Armed Forces in the area of Léré (Niafunké cercle). According to United Nations documents, supported by media reports, four people were wounded, including three children, during the clashes on 29 April 2015.[739] On that same day, members of CMA attacked the Malian National Guard quarters in Goundam, killing two National Guard members and one child.[740] The following day, during a CMA attack on Bintagoungou (Goundam cercle), three civilians (two of whom were identified) were wounded. During the attacks, members of CMA pillaged food and property and vandalized public premises.[741]

3. Region of Gao

438. The cessation of hostilities called for in the Ouagadougou preliminary agreement definitively reduced the clashes between the defence and security forces and the signatory armed groups (MNLA and HCUA), with the notable exception of the clashes that took place in Kidal in May 2014. However, fighting for the control of cities and areas in the northern regions of Mali, including the Gao region, intensified. The fighting pitted pro-Government armed groups, notably GATIA and MAA-Plateforme, against CMA armed groups, despite the peace negotiations that started in Algiers. The Commission documented several clashes that caused casualties among the population. While clashes involving the defence and security forces largely subsided, tensions persisted between some Malian Armed Forces soldiers and members of northern communities identified with armed groups. Several incidents attributable to the Malian Armed Forces were documented during that period in the Gao region, which also saw a cycle of violence and reprisals between the Imghad Tuareg and Fulani communities in the commune of Anchawadi. That cycle was triggered in November 2013 by the execution of a chief of the Imghad tribe of the village of Intakabart, in Anchawadi commune, and lasted until February 2014. Like other regions, the Gao region also experienced attacks by extremist armed groups targeting, inter alia, MINUSMA, humanitarian organizations and civilians.

i. November 2013 - February 2014 - Cycle of violence between Imghad Tuareg and Fulani communities in the commune of Anchawadi[742]

439. Violence between members of the Fulani and Touareg communities was documented, in particular by the Human Rights and Protection Division of MINUSMA, in several villages in the commune of Anchawadi, Gao cercle. The violence escalated when a Tuareg family was attacked on 18

[739] Report of the Independent Expert on the situation of human rights in Mali (A/HRC/31/76), 21 January 2016, para. 67; See also CMA communiqué No. 8-04-2015, 1 May 2015; Malijet, Combats entre rébellion et armée malienne à Léré près de la frontière mauritanienne, 29 April 2015; l'Express, Mali: combats entre rébellion et armée, 2 militaires et un enfant tués dans une attaque, 30 April 2015.

[740] Statement attributable to the Spokesman for the Secretary-General on Mali, 29 April 2015; See also Maliactu, Nord Mali : l'armée gouvernementale attaquée par des groupes armés de l'Azawad, 29 April 2015; RFI, Mali: Goundam et Léré sous tension, 30 April 2015; Romandie, Mali: 10 rebelles et neuf militaires tués lors des derniers combats, 30 April 2015. The Commission notes that CMA communiqué No. 8-04-2015 only confirms the clash in Léré.

[741] Confidential document of HRPD, MINUSMA; See also Maliweb, Après deux ans de règne d'IBK : une longue liste de dates noires, 30 September 2015.

[742] Case No. CEI 48.

November 2013.[743] The Commission elected to document some of the incidents of that cycle of violence without losing sight of the many other similar allegations that were brought to its attention.[744]

440. According to testimonies collected by the Commission and an analysis of credible and corroborated information contained in two reports of the Human Rights and Protection Division of MINUSMA issued in February and April 2014, a chief of the Imghad tribe of the village of Intakabart (Anchawadi commune, Gao cercle), who was over 70 years of age, and a girl approximately 4 years of age (identified) were killed. Those executions occurred on the night of 18 November 2013 and were committed by two armed (unidentified) individuals who attacked their home. During that attack, the assailants also shot and wounded an (identified) woman, stole her money and set her hamlet on fire.[745]

441. Since those responsible for the attack against the tribal chief had been identified as belonging to the Fulani community, members of the Imghad Tuareg community mobilized and in turn attacked Fulani camps around the village of Intakabart for the next two weeks. They killed several dozen Fulani (23 identified) and took away several heads of cattle. Following those attacks, the Fulani present in the area were forced to relocate to Niger, along with their livestock.[746]

442. In retaliation, on 6 February 2014, dozens of (unidentified) Fulani ambushed Inghad Tuareg merchants returning from the weekly cattle market in Tamkutat (Anchawadi commune, Gao cercle) in two vehicles. The next day, the bodies of at least 23 people were found scattered on the scene of the attack, along with a burned vehicle. Several of the injured were taken to the hospital in Gao, where one of them died. The population buried the bodies in four mass graves and/or individual graves near the site of the incident.[747]

443. In conclusion, the Commission considers that violence took place between the Imghad Tuareg and Fulani communities in the commune of Anchawadi. It confirms that, in retaliation for the death of a chief and a girl of the Imghad tribe, who were executed on 18 November 2013 by unidentified armed individuals, other unidentified armed men, said to belong to the Imghad Tuareg community, executed at least 23 Fulani between 19 November and 6 December 2013; and that on 6 February 2014, at least 25 Imghad Tuareg returning from the cattle market were also executed by unidentified armed men.

[743] Confidential investigation report of HRPD, MINUSMA; See also MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, paras. 70-74.

[744] See, for example, confidential document of HRPD, MINUSMA concerning the deaths of 17 Imghad Tuareg and Fulani between 7 and 10 February 2014.

[745] Testimonies Nos. 403, 526 and 537; Confidential investigation reports of HRPD, MINUSMA; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, para. 72. Maliactu.net, Le Général Gamou à propos de l’assassinat de ses proches à Djebock, 25 November 2013; Jeune Afrique, Mali: des proches du général Gamou assassinés près de Gao, un “avertissement”?, 21 November 2013; CNDH, Annual report 2013, August 2014, p. 23.

[746] Testimony No. 526; Confidential investigation reports of HRPD, MINUSMA; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, paras. 72-73; See also Maliactu.net, Le Général Gamou à propos de l’assassinat de ses proches à Djebock, 25 November 2013; Testimony No. 513.

[747] Confidential investigation reports of HRPD, MINUSMA; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, para. 74; See also testimonies Nos. 520, 537 and 514; Confidential document of HRPD, MINUSMA; See also Malijet, Nord du Mali: au moins 30 Touareg tués dans des violences intercommunautaires, 7 February 2014; RFI, Mali: trente Touaregs assassinés près de Gao, 7 February 2014; Malijet, Peulh au Nord du Mali / De la frustration au Mujao ?, 11 February 2014.

Although the Commission received indications that Malian Armed Forces soldiers conducted an investigation into the attack of that family in Intakabart,[748]it has yet to receive specific information about any investigations or legal proceedings undertaken in connection with those incidents, despite official requests to the Government of Mali.[749]

ii. February to May 2014 - Abuses by Malian Armed Forces soldiers in the region of Gao

444. The Commission documented three cases of abuse by Malian Armed Forces soldiers in the region of Gao during that period, although the abuses were lesser in scope when compared with those of 2013.

19 February 2014 - three Tuareg men executed by Malian Armed Forces soldiers at a checkpoint in Djebock[750]

445. According to information received by the Commission and, in particular, the investigation conducted by the Human Rights and Protection Division of MINUSMA in February 2014 in Djebock, supported by photographs and information from eyewitnesses, on 19 February 2014, three (identified) Tuareg men from the family of the chief of Intakabart left Gao for Tamkutat, passing through Djebock, where they were arrested at a checkpoint controlled by Malian Armed Forces soldiers, who tied them up and put them lying face down.

446. Two days later, on 21 February, local residents informed the local authorities that the bodies of three Tuareg men had been found two kilometres from the checkpoint controlled by Malian Armed Forces soldiers. A Malian Armed Forces patrol also reported the presence of an abandoned vehicle in Djebock. The gendarmerie opened an investigation on 22 February and, the following day, a delegation that included the judicial investigation service of the Bamako National Gendarmerie exhumed the three bodies, which were still had their arms and legs bound, with bullet wounds in their heads.[751]

447. Having analysed the testimonies confirming those events, along with the investigation report of the Human Rights and Protection Division of MINUSMA following a mission to Djebock in February 2014, the Commission notes that the Malian Armed Forces patrol that arrived in Djebock on 17 February 2014 to secure the area was recalled to Gao on the day of the incident. On 23 February 2014, following the interrogation of the alleged perpetrators by the National Gendarmerie delegation from Bamako, four Malian Armed Forces soldiers were indicted for voluntary manslaughter.[752]

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[748]Testimony No. 526; See also confidential document of HRPD, MINUSMA; See also MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015; Confidential investigation report of HRPD, MINUSMA.

[749]Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

[750]Case No. CEI 49.

[751]Confidential documents of HRPD, MINUSMA; See also testimony No. 537; Report of the Secretary-General on the situation in Mali (S/2014/229), 28 March 2014, para. 34.

[752]Confidential documents of HRPD, MINUSMA; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, para. 29.

448. In conclusion, the Commission finds that there are reasonable grounds to believe that, on 19 February 2014, Malian Armed Forces soldiers (patrol identified in a confidential annex) arrested three Tuareg men in Djebock, killed them and buried them the same day near a military checkpoint. Despite the investigation carried out by the National Gendarmerie, the interviews that the Commission was able to conduct with the military command of the Malian Armed Forces, and the Commission's written requests concerning that case, it has still not received specific information from the authorities as to the status of the investigation of the Malian Armed Forces soldiers who committed the abuses.[753]

16 April 2014 - Cattle herder killed by Malian Armed Forces soldier in the city of Gao[754]

449. According to consistent and corroborated testimonies collected by the Commission, on 16 April 2014, an (identified) old Tuareg cattle herder was grazing his cattle in an area near a pond close to military camp No. I in Gao. While sitting under a tree, he was hit by a bullet in the abdomen. Informed by a witness who was present near the area of the incident and who went looking for help, family members went to the scene but only saw traces of blood under the tree. They were only able to find the man's body the next morning. Following that incident, the Governor of Gao at the time came to offer his condolences to the family and informed them that the Malian Armed Forces soldier responsible for the death had been identified and that he had stated that he had shot the old man by mistake, thinking that he was a "Mujahideen".[755] According to some sources, the Malian Armed Forces soldier was arrested by the military police and held in a military prison pending trial.[756] However, according to other sources, he was subsequently released without charge. The victim's family has not been informed of any legal action in that case.[757]

450. In conclusion, the Commission finds that there are reasonable grounds to believe that a Malian Armed Forces soldier killed an old Tuareg man near military camp No. I in Gao on 16 April 2014. Despite the investigation and the initial arrest of the suspect, the testimony received by the Commission suggests that no judicial proceedings resulted from the incident. The Commission asked the Government of Mali about any existing legal proceedings involving Malian Armed Forces soldiers but had not received a response by the date of submission of the present report.[758]

9 May 2014 - Rape of a 14-year-old girl by a Malian Armed Forces soldier in Gao[759]

451. According to information collected by the Human Rights and Protection Division of MINUSMA, based on interviews with the victim and her family and confirmed also by medical

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[753] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Malian Minister of Justice. Both remain unanswered to this day.

[754] Case No. CEI50.

[755] Testimonies Nos. 367 and 350; Confidential document of HRPD, MINUSMA. Report of the Secretary-General on the situation in Mali (S/2014/403), para. 31.

[756] Testimony No. 367; Confidential document of HRPD, MINUSMA; Report of the Secretary-General on the situation in Mali (S/2014/403), 9 June 2014, para. 31; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, para. 30.

[757] Testimony No. 367; See also confidential document of HRPD, MINUSMA.

[758] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice. Both have remained unanswered to this day.

[759] Case No. CEI 51.

examinations conducted at the hospital in Gao, on 9 May 2014, two (identified) "red berets" riding in a vehicle of the Malian Armed Forces went to the house of a 14-year-old (identified) girl and asked her to follow them to collect their laundry which a member of her family was to wash. When she arrived at their home, one of the soldiers raped her at gunpoint, while the other soldier stood guard at the door. They then took her back to the vicinity of her neighbourhood and threw a 1,000 CFA franc bill at her.[760]

452. On the same day, the victim's family filed a complaint with the gendarmerie in Gao. On 12 May and 7 July 2014, the Gao gendarmerie sent two pieces of correspondence, which remained unanswered, to the military command of the Malian Armed Forces requesting access to the two identified alleged perpetrators.[761]

453. In conclusion, the Commission considers that there are reasonable grounds to believe that on 9 May 2014, a 14-year-old girl was raped in Gao by a Malian Armed Forces soldier, with the complicity of one of his comrades (both identified in a confidential annex). Despite a complaint filed and the efforts of the Gao gendarmerie to investigate the case, the request for access was unsuccessful and no legal proceedings against the perpetrators of the crime resulted from the investigation.

iii. July 2014 - People killed and wounded in clashes between MNLA and MAA-Plateforme in Takaskaza[762]

454. According to reports of the Human Rights and Protection Division of MINUSMA, including testimonies collected during an August 2014 mission, clashes occurred from 11 to 24 July 2014 in Tabankort (Tarkint commune, Bourem cercle) between MNLA and MAA-Plateforme (the latter having been present in Tabankort since 23 June 2014).[763]

455. On 21 July 2014, clashes occurred in the village of Takaskaza, approximately 20 km from Tabankort, with civilians (some identified) suffering gunshot wounds and a one-year-old girl, two boys aged 7 and 10, a 65-year-old woman (all identified) and a 29-year-old man being shot to death.[764] Residents indicated that the bullets came from the side where MNLA positions were located and that MNLA had used the population as "human shields".[765] According to a witness, armed men also arrived in Takaskaza on the morning of 22 July 2014 in a vehicle that normally brought water to the villagers.

[760] See also confidential documents of HRPD, MINUSMA; MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, para. 34; Report of the Independent Expert on the situation of human rights in Mali, Suliman Baldo (A/HRC/28/83), 9 January 2015, para. 59.

[761] Confidential documents of HRPD, MINUSMA; See also MINUSMA and OHCHR, Report on the situation of human rights in Mali from 1 November 2013 to 31 May 2014 (French), 20 March 2015, paras. 34.

[762] Case No. CEI 52.

[763] Confidential documents of HRPD, MINUSMA; See also, Bamada.net, Affrontements intercommunautaire a Tabankort : plus de 100 morts et 125 blesses, 15 July 2014.

[764] Confidential documents of HRPD, MINUSMA. The Commission notes that in one of the HRPD records a witness said that he had been injured on July 29 during the same clashes. However, considering his contradictory accounts and other indications, the Commission does not have reasonable grounds to believe that he was not injured while participating in the conflict. See confidential document of HRPD, MINUSMA.

[765] Confidential documents of HRPD, MINUSMA.

At one point, members of MNLA opened fire on the inhabitants, injuring the son of the (identified) witness.[766]

456. In conclusion, the Commission considers that there are reasonable grounds to believe that during the clashes between MNLA and MAA-Plateforme in July 2014 in Takaskaza, at least five people, who were not participating in the conflict, were shot to death and several other people suffered gunshot wounds (some of the victims are identified in a confidential annex). On the basis of the information in its possession, the Commission notes that no investigation has been initiated, nor has any judicial decision been taken by the Malian authorities in respect of those events with a view to identifying the perpetrators of the abuses.

iv. 21 May 2015 – Execution of six people by members of GATIA in Tin Hama[767]

457. According to the information gathered by the Commission, in particular the information from the field investigation conducted by the Human Rights and Protection Division of MINUSMA from 21 May to 5 June 2015, which is corroborated by testimonies obtained by the Commission, there were several hours of fighting between CMA armed groups and GATIA in the village of Tin Hama (Tin Hama commune, Ansongo cercle) on the morning of 20 May 2015. GATIA had been in control of the village since February 2015.

458. On the evening of 20 May 2015, three individuals, thought by some to be members of GATIA, went to the home of the marabout of the village's Kel-Essouk[768] community and told him that the Kel-Essouk (who even before the clashes had been seen as CMA sympathizers) were unwelcome and that arrangements should be made for all Kel-Essouk families to leave Tin Hama within 24 hours. The next morning, six armed men, presumably members of GATIA, apprehended and tied up six (identified) people from the Kel-Essouk community whom they suspected of colluding with CMA groups. Three (identified) presumed members of GATIA then executed them. All the Kel-Essouk families in the village (amounting to approximately 230 people) were forced to leave soon after the funerals of the victims, which were held the same day. According to the investigation by the Human Rights and Protection Division of MINUSMA, soldiers of the Malian Armed Forces were in Tin Hama that day and left the locality after the incident.[769]

459. On 21 May 2015, members of GATIA turned in three people from Tin Hama, whom they said had carried out the executions, to the local authorities. On 22 May 2015, the mayor of Tin Hama was informed that the three individuals were no longer in custody.[770]

[766] Confidential document of HRPD, MINUSMA.

[767] Case No. CEI53.

[768] The village of Tin Hama comprises four main communities: Tuareg, Kel-Essouk Tuareg, Daoussahak Tuareg and Fulani.

[769] Confidential report of HRPD, MINUSMA on the events that took place in Tin Hama on 20 and 21 May 2015, December 2015; Confidential document of HRPD, MINUSMA; Confidential report of the United Nations Police (UNPOL); Testimonies Nos. 503 and 445; Report of the Independent Expert on the situation of human rights in Mali (A/HRC/31/76), 21 January 2016, p. 9; FIDH and AMDH, Mali: la FIDH et l'AMDH condamnent l'exécution d'au moins six personnes à Tin Hama dans le cercle d'Ansongo, 2 June 2015; See also AI, Mali. Violations and abuses as instability spreads, 2017, p. 11; HRW, Mali conflict and aftermath: compendium of Human Rights Watch Reporting, 2012–2017, 2017, p. 45.

[770] The available information indicates that they were either released or escaped. See confidential report of HRPD, MINUSMA on the events that took place in Tin Hama on 20 and 21 May 2015; Testimonies Nos. 503 and 445.

460. In conclusion, the Commission considers that there are reasonable grounds to believe that three armed individuals (who are identified in a confidential annex) arrested and executed six members of the Kel-Essouk community in Tin Hama on the morning of 21 May 2015. The Commission takes note of the efforts made by GATIA to identify and arrested the persons responsible and of the investigation that the Human Rights and Protection Division of MINUSMA conducted immediately after the events, the preliminary conclusions of which were shared with the Malian authorities (the Prime Minister, the Minister for Foreign Affairs, and the Minister of Justice and Human Rights and Keeper of the Seals).[771] On the basis of the information in its possession, the Commission notes that the Malian authorities have not initiated any investigation or legal proceedings to identify the persons who carried out the abuses.[772] The Commission made inquiries to the authorities in that regard, but no response had been received as at the date of submission of this report.[773]

v. Attacks against MINUSMA in the region of Gao

3 October 2014: Ambush of a MINUSMA patrol in the Intekelit valley resulting in the deaths of nine peacekeepers from Niger.[774]

461. On 3 October 2014, at approximately 8 a.m., a convoy of seven vehicles carrying 37 soldiers belonging to the MINUSMA contingent from Niger was travelling on the Ménaka-Ansongo road with a supply of fuel when soldiers noticed an improvised explosive device on the road 15 km from the village of Indélimane, Ménaka cercle, region of Gao. While the convoy was stopped and the commander was inspecting the device, assailants attacked the convoy with heavy fire. They hit the fuel truck with a rocket, causing it to catch fire and explode. The peacekeepers then tried to return the fire with their rifles and the machine guns mounted at the front of their vehicles, but the machine guns jammed.[775] After taking refuge and repairing their weapons, the Niger battalion was able to return fire. After around 30 minutes of fighting, the attackers, having suffered no loss of life, retreated on motorcycles. Nine peacekeepers died in the attack. That night, Abdou Aïssa, known as Sultan Ould Badi, the leader of the Salah Eddine katiba of AQIM, claimed responsibility for the attack.[776]

462. On 20 October 2014, MINUSMA sent a note verbale to the Malian authorities requesting information on the actions taken by the Government to investigate the attack or prosecute the perpetrators. According to MINUSMA, it has not received a response from the Malian authorities to date.[777]

[771] Confidential report of HRPD, MINUSMA on the events that took place in Tin Hama on 20 and 21 May 2015; Confidential document of HRPD, MINUSMA; Confidential report of UNPOL.

[772] See also report of the Secretary-General on the situation in Mali (S/2016/281), 28 March 2016, para. 36.

[773] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

[774] Case No. CEI54.

[775] Confidential documents of MINUSMA; See also HRW, Mali conflict and aftermath: compendium of Human Rights Watch Reporting, 2012–2017, 2017, p. 59.

[776] VOA Africa, Un proche du MUJAO revendique l’attaque qui a fait neuf morts au Mali, 6 October 2014.

[777] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry, concerning judicial follow-up to attacks against MINUSMA.

15 April 2015 – Suicide attack on the camp of the Niger battalion of MINUSMA in Ansongo[778]

463. On 15 April 2015, at around 10.30 a.m., a large number of children gathered to play football on a vacant lot in front of a fuel station located approximately 50 metres from the entrance to the camp of the Niger battalion of MINUSMA in the locality of Ansongo (Ansongo cercle), 90 km south-east of the city of Gao. At approximately 11.40 a.m., the driver of a white Toyota “Land Cruiser” (which had been stolen on 23 March 2015 from the International Rescue Committee by two men on motorcycles armed with AK-47s in the village of Targalet, 55 km south of Ménaka) suddenly veered off the road and attempted ram the vehicle through the stone barrier protecting the entrance to the fuelling area. When that failed, he turned around and tried to reach the fuelling area another way, but the vehicle became stuck in the sand. Under fire from the peacekeepers, the driver detonated a vehicle-borne improvised explosive device, killing a 10-year-old boy and a Malian national who worked for a MINUSMA subcontractor (both identified). Fourteen (identified) boys between the ages of 3 and 16, three (identified) women and nine (identified) peacekeepers from the Niger battalion of MINUSMA were seriously injured in the blast.[779]

464. The attacker could not be identified, but Al Mourabitoun, headed by Algerian Mokhtar Belmokhtar, claimed responsibility for the attack.[780] On the basis of information from confidential judicial sources, the Commission can conclude that the (identified) spokesperson for Al Mourabitoun was personally responsible. He appears to have built the improvised explosive device that was placed in the vehicle and used in the attack, with full knowledge of its intended purpose.[781]

465. The Commission asked MINUSMA what measures it had taken to follow up on the investigation into and the prosecution of the perpetrators of the attack by the Malian authorities, but the Mission was unable to provide the Commission with any information.[782]

vi. 5 April 2015 – Three people killed and two wounded by a rocket in the city of Gao[783]

466. According to the Commission’s investigation, which included interviews with eyewitnesses, at least three rockets were fired at the city of Gao at approximately 6 a.m. on 5 April 2015, hitting the northern, central and southern areas of the city. One of the rockets fell on two neighbouring family homes, injuring a 29-year-old woman, a teenage girl of around 18 and a 4-year-old boy, all of whom

[778] Case No. CEI55.

[779] Confidential document of MINUSMA; MINUSMA, press release, Nine peacekeepers injured, three civilians killed and seven wounded in a suicide attack in Ansongo, 15 April 2015; See also Le Monde, Mali : 3 morts dans un attentat suicide contre une base de l’ONU, 15 April 2015.

[780] Confidential document of MINUSMA. See also Studio Tamani, Terrorisme : Le groupe jihadiste El Mourabitoune revendique l’attaque d’Ansongo, 18 April 2015.

[781] Confidential document from a judicial source.

[782] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General for Mali and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry, concerning judicial follow-up to attacks against MINUSMA.

[783] Case No. CEI56.

died of their injuries or complications from medical treatment. One man was lightly wounded in the foot and another was seriously wounded in the stomach. (All of the victims were identified.)[784]

467. In conclusion, the Commission finds that there are reasonable grounds to believe that three people were killed and two wounded in their homes in indiscriminate rocket attacks on the city of Gao on the morning of 5 April 2015. The Commission notes, on the basis of the information in its possession, that no investigation or legal proceedings have been initiated by the Malian authorities in connection with those events.

vii. 2014–2016 – Attacks on humanitarian organizations by members of MUJAO and Ansar Eddine in the regions of Gao and Kidal[785]

468. The Commission gathered information on several attacks on humanitarian missions, most of which took place between 2014 and 2016 in the regions of Gao and Kidal. One of those attacks involved the kidnapping of four (identified) members of the International Committee of the Red Cross (ICRC) and a veterinarian from another organization on the Gao-Kidal road on 8 February 2014. Members of MUJAO claimed responsibility for the kidnapping. The five hostages, two of whom suffered minor injuries, were freed in an operation conducted by French forces in northern Mali on the night of 16 to 17 April 2014.[786]

469. On 30 March 2015, a truck clearly marked with the ICRC emblem was attacked between Gao and Ansongo as it was being driven to Niger to collect medical supplies for the hospital in Gao. The (identified) driver was killed and a member of the ICRC Mali office was injured. MUJAO claimed responsibility for the attack.[787]

470. On 29 April 2016, a Danish Refugee Council humanitarian convoy was fired on 75 km from the city of Gao (on the Dorey-N'Tillit road). Three humanitarian workers were injured, one seriously, and two vehicles were burned.[788] On 16 April 2016, three people working with ICRC were kidnapped on their way to Kidal after conducting a mission in Abeïbara. A spokesperson for Ansar Eddine told Agence France Presse that the hostages would be exchanged for an individual who had been detained

[784] Testimonies Nos. 216 and 169; MINUSMA, press release, Innocent civilians fell victim to an attack this morning in Gao, 5 April 2014; Confidential document of HRPD, MINUSMA; See also RFI, Mali: des roquettes s'abattent sur des civils à Gao, 5 April 2015; Le Parisien, Mali : tirs de roquettes sur le centre-ville de Gao, 5 April 2015; Maliactu, Mali : un tué, trois blessés par un tir de roquette sur une maison à Gao, 5 April 2015.

[785] Case No. CEI57.

[786] Confidential document of HRPD, MINUSMA; Confidential document from a diplomatic source; See also ICRC, Mali : L'equipe du CICR est libre, 17 April 2014; Jeune Afrique, Mali : un cadre du Mujao revendique l'enlèvement d'une équipe du CICR, 11 February 2014 ; See also ICRC, Mali: Mali : Disparition d'un véhicule transportant une équipe du CICR, 10 February 2014; L'Express, Mali: un mort dans l'attaque d'un convoi humanitaire par des jihadistes, 30 March 2015 (updated 31 March 2015).

[787] ICRC, Mali : le CICR condamne l'attaque qui a coûté la vie à un de ses collaborateurs, 30 March 2015; AFP, Nord du Mali: un mort dans l'attaque d'un convoi humanitaire, 31 March 2015; L'Express, Mali: un mort dans l'attaque d'un convoi humanitaire par des jihadistes, 30 March 2015 (updated 31 March 2015); France24, Mali : un employé du CICR tué dans l'attaque d'un convoi par le Mujao, 31 March 2015 ;See also HRW, Mali conflict and aftermath: compendium of Human Rights Watch Reporting, 2012–2017, 2017, p. 60.

[788] UN News, Mali : la Coordonnatrice humanitaire condamne une attaque contre un convoi humanitaire, 4 May 2016.

by the French *Operation Barkhane* forces, but they were in fact released "without conditions" on 22 April 2016.[789]

471. Attacks on humanitarian missions naturally have an impact on the people who are attacked, their families and, more broadly, the work of the organizations concerned. They also disrupt the delivery of the essential aid that these missions provide to the most vulnerable, the victims of the crisis whose survival depends on it.

472. In conclusion, the Commission considers that there are reasonable grounds to believe that several attacks against humanitarian missions were carried out in the regions of Gao and Kidal between 2014 and 2016. Specifically, members of MUJAO took four ICRC staff members and one member of another organization hostage on 8 February 2014 and attacked an ICRC truck, killing the driver, on 30 March 2015, while Ansar Eddine took three people working with ICRC hostage on 16 April 2016 and released them a week later. Despite its best efforts, the Commission was unable to speak to the ICRC leadership to gain a better understanding of the motives for the attacks and verify whether the victims or their beneficiaries had been able to file legal complaints. Furthermore, the Commission has not yet received specific information from the Malian authorities concerning any investigations or legal proceedings initiated in response to those events.

4. Region of Mopti

i. 2 November 2014 – Detention and ill-treatment of 17 men and 3 children in the locality of Boulikessi attributable to soldiers of the Malian Armed Forces[790]

473. On 2 November 2014, at approximately 10 a.m., soldiers of the Malian Armed Forces (from the Gendarmerie, the National Guard and the Army) retook Boulikessi, in Douentza cercle, where fighters belonging to CMA armed groups were stationed.[791] After those fighters fled, the defence and security forces conducted a search of residences and businesses. They arrested 20 (identified) individuals, 17 men and 3 boys (aged 14 to 15), who were suspected of belonging to or collaborating with extremist armed groups.[792]

474. Some of those who were arrested were subjected to ill-treatment attributable to the Malian Armed Forces.[793] Others suffered deep wounds to their hands and feet which been tied too tightly for several days. A farmer who had gone to the market to sell a goat gave the following testimony when

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[789] ICRC, Mali : trois collaborateurs du CICR manquent à l'appel dans le nord, 18 April 2016; ICRC, Mali : L'equipe du CICR est libre, 22 April 2016; Malijet, Ansar Dine dit détenir trois humanitaires de la Croix-Rouge au Mali et réclame une libération en échange, 21 April 2016; Jeune Afrique, Mali : libération des membres de la Croix-Rouge enlevés par Ansar Eddine, 22 April 2016.

[790] Case No. CEI58.

[791] See Malian Armed Forces, press release, 2 November 2014; Malian Armed Forces, press release, 3 November 2014; CMA, press release, Violation du cessez-le-feu et allégations de la part du Gouvernement malien, 3 November 2014.

[792] Malian Armed Forces, press release, 3 November 2014.

[793] The Human Rights and Protection Division of MINUSMA investigated the arrests a few days after they occurred. As part of the investigation, human rights officers interviewed the people who had been arrested and took photographs showing their physical condition. The Commission, having examined the information and methodology used and having had its findings confirmed by forensic analyses, considers that the findings of the investigations conducted by the Human Rights and Protection Division are credible and substantiated. See confidential report of HRPD, MINUSMA and the four forensic reports dated 30 April 2020 drawn up by the Commission's forensic doctor.

interviewed by the Human Rights and Protection Division of MINUSMA: "Soldiers chased me and arrested me. The soldiers beat me until my chest hurt. When I fell to the ground, they stepped on me." At least two people, a farmer and a student at a Qur'anic school, were arrested and taken to the elementary school in Boulikessi, where they found several men who had been arrested by soldiers wearing green berets. They were then kicked several times by members of the Malian Armed Forces. The Commission's medical examiner cross-checked the testimony of one of the victims against photographs of his injuries and concluded that the lesions pictured were consistent with his description of the events (being kicked at shoulder level).

475. Another victim, who was 15 years old, said that he had been riding his bike from village to village in the area to engage in petty trade and was arrested and handcuffed as he left the market in one village. He was punched and kicked several times between his arrest and his arrival at the gendarmerie. He said that he informed gendarmes in Mopti, and then Bamako, that he was 15. Another boy, who was about 14 and worked as a cattle herder, said that he was arrested, and that in the process, four or five soldiers kicked him in the head until he lost consciousness. A photograph taken four days after the arrest shows visible bruising around his face and neck which, according to the forensic doctor, was consistent with his description of the events. A 15-year-old Arab boy, who told the authorities that he was 18, said that he was arrested as he sat in the compound of his home, on the grounds that he was a "rebel". Malian Armed Forces soldiers reportedly handcuffed and blindfolded him, took him into a room, held a pistol next to his ear and fired at least two shots.

476. At least two of the people who were arrested and had their hands tied behind their backs with a rope or with their trousers for two days had deep infected wounds on their hands which, according to the forensic doctor, were consistent with the victims' statements about being tied up. Upon examination of the various photographs submitted, the doctor also concluded that the lesions visible around the victims' wrists could have been the result of them being tied and rubbing against a rough object or surface, such as the ground or a rope from which the victims were trying to free themselves.

477. The (identified) commander of the military detachment that went to Boulikessi that day was replaced shortly after those events. He denied that any objectionable acts were carried out. When questioned shortly after the events, he apparently said that the 20 individuals concerned were arrested by gendarmes and that none of them were subjected to torture or ill-treatment. He said that if there were any injuries, they had been caused by the arrested persons struggling or trying to escape, and that he was satisfied with the behaviour of his men on the ground.[794] However, several testimonies and certain injuries observed contradict his version of events and show that ill-treatment occurred following the arrests. Furthermore, the witnesses interviewed by the Human Rights and Protection Division of MINUSMA stated that the ill-treatment that they experienced after they were arrested or while they were being transported to a place of detention was attributable to Malian Armed Forces soldiers. There were no reports of ill-treatment by gendarmes on the ground or on duty at the gendarmerie stations in Mopti, Sévaré or Bamako. At least 18 of those arrested that day, including 3 children, were transferred from Sévaré to gendarmerie camp No. 1 in Bamako on 18 November 2014. They were released on 2 December 2014. The Commission notes that the three children were detained for a month before being released. In conclusion, the Commission finds that there are reasonable grounds to believe that on 2 November 2014, (unidentified) Malian Armed Forces soldiers arrested 17 men and 3 boys aged between

[794] Confidential report of HRPD, MINUSMA. Owing to the COVID-19 pandemic, the Commission was not able to question him prior to the finalization of the report, to find out whether his version of events remained the same.

14 and 15, who were residents of Boulikessi, during a military operation in the locality, and that several of those arrested were subjected to ill-treatment.[795]

478. The Commission has not received any information concerning military or judicial investigations that may have been conducted in connection with those events. The Commission asked the Government of Mali for information about any judicial proceedings under way concerning soldiers of the Malian Armed Forces, but had not received any response as at the date of submission of this report.[796]

5. Region of Ségou

i. January to June 2015 - Arrest, detention, ill-treatment and torture of mostly Fulani civilians by soldiers of the Malian Armed Forces from the Nampala military camp[797]

479. Following the attack on the Nampala military camp by extremist armed groups on 5 January 2015,[798] the security situation in Nampala cercle in the region of Ségou deteriorated rapidly. A local authority interviewed by the Commission explained that after the attack, the Malian Armed Forces considered that their enemies were no longer men from the Tuareg community but those from the Fulani community.[799] Another Fulani local authority gave the following explanation: "The suspicions were mutual. We were afraid of soldiers of the Malian Armed Forces and they thought that we were accomplices of the jihadists. If we told them that we had seen a foreigner, the Malian Armed Forces accused us of complicity with the jihadists. In turn, if the jihadists suspected someone of supporting the Malian Armed Forces, his or her life was in danger. We were really caught between a rock and a hard place."[800] The soldiers of the Malian Armed Forces in the region of Ségou then began a campaign of arresting men, mostly Fulani living in the area, who were suspected of supporting and cooperating with extremist armed groups.[801] That campaign of arrests caused many a large number of Fulani residents to flee from the region, taking refuge in Mauritania in particular.

480. The Commission noted that the local people who remained in the area and whom it wished to interview were still afraid and were reluctant to give information on the incidents for fear of reprisals.

481. The Commission was however able to confirm, through testimonies and forensic analyses, the allegations reported by the Independent Expert on the situation of human rights in Mali and by human rights associations that soldiers of the Malian Armed Forces from the Nampala military camp had

[795] Confidential report of HRPD, MINUSMA.

[796] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali.

[797] Case No. CEI59.

[798] Seven or eight soldiers of the Malian Armed Forces were killed in that attack, and three wounded by gunshots were treated at the hospital in Ségou. On the day of the attack, the Mauritanian news website Alakhbar, familiar with the claims of the extremist armed groups, reported that one of its sources in AQIM had participated in the attack on the Nampala military camp. A few months later, in July 2015, Ansar Eddine claimed responsibility for the attack on the Nampala military camp of January 2015, attributing it to the Macina katiba. (Alakhbar, Mali: AQMI se retire de Nampala avec plusieurs otages maliens, 5 January 2015; Alakhbar, Mali: le groupe Ançar Dine revendique une série d'attentats, 5 July 2015; Testimonies Nos. 300 and 274; Confidential medical source document).

[799] Testimony No. 300, para. 18.

[800] Testimony No. 274, paras. 20 and 21.

[801] Testimony No. 274, paras. 1-12; Report of the Independent Expert on the situation of human rights in Mali (A/HRC/31/76), 21 January 2016, para. 41; HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012–2017, 2017, pp. 43-49.

committed, in the first six months of 2015, numerous acts of ill-treatment and torture against men, mainly from the Fulani community.[802] Based on the information that it collected, the Commission estimates that around 40 people were arrested between January and June 2015, including around 20 in connection with the attack on the Nampala camp of January 2015. Some were released in Niono[803] and others were transferred to Bamako. The Commission considers that the cases presented below are representative of similar and recurrent abuses that occurred between January and June 2015 in Niono cercle.

April 2015 - Detention and physical assault of six Fulani men

482. On 22 April 2015, three (identified) farmers from the Fulani community in the village of M'boudouboubou were arrested by soldiers of the Malian Armed Forces from the Nampala military camp on suspicion of belonging to extremist armed groups. The three farmers were violently beaten during their transfer to the military camp. The soldiers had tied their hands and feet behind their backs for a prolonged period of time, leaving them with physical scars. One of them was hit with a rifle butt so hard that his teeth were broken. At the Nampala military camp, the three farmers were locked in a cell and during the evening they were again violently beaten by soldiers of the Malian Armed Forces.[804] The Commission's forensic doctor concluded that the victims' physical and psychological scars were consistent with their version of events.

483. The next day, soldiers of the Malian Armed Forces from the Nampala military camp arrested another three Fulani men for the same reasons. The three men were so severely beaten by the soldiers in the camp that the next day one of them could not move, eat or relieve himself without assistance. His health condition meant that he required several months of medical check-ups.[805]

484. After several days of detention at the Nampala military camp, the six men were taken by soldiers of the Malian Armed Forces to the Niono gendarmerie station, where they were interrogated by gendarmes. They were not mistreated at the station; on the contrary, the most seriously injured men received medical attention.[806] After three weeks of detention at the gendarmerie station in Niono, the six detainees were transported to Bamako and brought before a judge, who released them the same day.[807]

June 2015 - Detention and physical assault of four Fulani men

485. In early June 2015, in the days following the killing of a gendarme by four members of the Macina katiba in the commune of Dogofri (Niono cercle),[808] soldiers from the Nampala camp arrested,

[802] Report of the Independent Expert on the situation of human rights in Mali (A/HRC/31/76), 21 January 2016, para. 41; and HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012–2017, 2017, pp. 43-49.

[803] Document from witness No. 300; Confidential document of HRPD, MINUSMA; See also HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012–2017, 2017, pp. 43-49.

[804] Testimony No. 296, paras. 1-4.

[805] Testimony No. 296, paras. 5 and 6; Testimony No. 274, paras. 13 and 14.

[806] Testimony No. 296, para. 9; Testimony No. 274, paras. 22 and 23.

[807] Testimony No. 296, paras. 10 and 11; Testimony No. 274, paras. 23-25; Testimony No. 300, paras. 46 and 47; Testimony No. 304; Confidential document of HRPD, MINUSMA.

[808] Malijet.net, Dogofri: un gendarme abattu par 4 hommes armés, 4 June 2015.

detained, mistreated and tortured Fulani men whom they suspected of complicity with extremist armed groups.

486. On 4 June 2015, a local Fulani farmer was arrested, tied up and placed under a tree on the outskirts of the Nampala military camp. His feet and hands were tied behind his back. He was then violently kicked and beaten with sticks and belts by several (unidentified) soldiers of the Malian Armed Forces. His skin was burned in multiple places by the soldiers while they interrogated him about his relations with extremist armed groups.[809] The interrogation lasted almost two hours. The farmer, covered in blood, was then transported inside the camp. He came across the (identified) commander of the Nampala military camp and the (identified) Nampala sub-prefect, who did not react to the signs of abuse that were nevertheless apparent on his face and the rest of his body.[810] The farmer was held for 10 days in the camp, during which time he was beaten repeatedly by soldiers of the Malian Armed Forces.[811] The Commission's forensic doctor concluded that the victims' physical and psychological scars were consistent with their version of events (binding, hanging of the body and burns).

487. Similarly, on 6 June 2015, three other Fulani men, residents of Nampala, were arrested and ill-treated by (unidentified) soldiers of the Malian Armed Forces from the Nampala military camp on suspicion of collaborating with extremist armed groups. One of the victims explained that he had been stripped naked with his hands and feet tied behind his back; he had then been hung on a wall. Soldiers of the Malian Armed Forces burned his skin with hot objects while interrogating him about the perpetrators of the attack on the Nampala camp of January 2015. The victim's story was consistent with the medical findings of the Commission's forensic doctor. The soldiers also threatened to slit his throat if he did not cooperate with them. A witness said that he had seen another Fulani man arrested the same day in the Nampala military camp;[812] he had been unconscious with his hands and feet tied behind his back.

488. After several days of ill-treatment in the military camp, the four victims were taken to the Niono gendarmerie station, where they were interrogated, but without being ill-treated.[813] After two weeks of detention at the station, the four Fulani men were transferred to Bamako. At the request of the Special judicial unit, some of them were released the same day and others the next day. The Commission was also able to establish that, at various stages of the judicial process, sums of money were paid to intermediaries in Niono and Bamako by relatives of the detainees in order to obtain their release.[814]

Conclusion

489. In conclusion, there are reasonable grounds to believe that between January and June 2015 members of the Malian Armed Forces in the Nampala military camp detained, ill-treated and tortured several dozen mostly Fulani men. In 2015, the Nampala military camp was led by an (identified) colonel

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[809] Testimony No. 295, paras. 1-9; Testimony No. 300, paras. 46 and 47; Testimony No. 273, paras. 21 and 22; See also medical report of the Commission's forensic doctor and confidential document of HRPD, MINUSMA, confirming the date of his arrest.

[810] Testimony No. 295, paras. 11 and 12.

[811] Testimony No. 295, paras. 13-15; See also medical report of the Commission's forensic doctor.

[812] Testimony No. 273, paras. 14-20.

[813] Testimony No. 273, paras. 24-26; Testimony No. 295, paras. 21-24.

[814] Testimony No. 273, paras. 27-30; Testimony No. 296, paras. 10 and 11; Testimony No. 274, paras. 23-25; Testimony No. 300, paras. 46 and 47; Testimony No. 304; Confidential document of HRPD, MINUSMA.

of the Malian Armed Forces. His superior, the head of the Ségou defence zone, was another (identified) colonel of the Malian Armed Forces. The names of several other soldiers of the Malian Armed Forces who were based at the Nampala camp in 2015 are contained in a confidential annex to the present report.[815]

490. In December 2015, at the time of publication of its report, Human Rights Watch met with a representative of the Ministry of Defence who provided the organization with the following assurance: "Respect for detainees is very clearly a priority of the Ministry of Defence. We fully recognize that soldiers do not have the right to mistreat detainees or a mandate to interrogate people". He also indicated that allegations of abuses related to the Nampala camp would be investigated.[816] A judicial source confirmed to the Commission that violence was frequently committed by soldiers in the context of arrests in the region of Ségou. The source added that every time there was suspicion of violence, the gendarmes were asked to have a medical certificate drawn up to record the violence. The medical certificate was then placed in the file of the detainees and transmitted to the Special judicial unit.[817] However, no legal proceedings were instituted against soldiers of the Malian Armed Forces following the events described above. The Commission asked the Government of Mali about existing judicial proceedings involving soldiers of the Malian Armed Forces but had not received a response by the date of submission of the present report.[818]

6. City of Bamako and region of Koulikoro

i. 30 September to 4 October 2013 - Disappearance, execution and ill-treatment of soldiers of the Malian Armed Forces attributable to General Amadou Haya Sanogo and other soldiers following the Kati mutiny of 30 September 2013[819]

491. On 30 September 2013, a member of the Malian Armed Forces from the Kati military camp shot and wounded the chief of staff and aide-de-camp of newly promoted General Amadou Haya Sanogo. The incident triggered a mutiny initiated by a group of soldiers who had participated in the coup with General Sanogo but who then blamed him for not keeping his promise to obtain promotions and better salaries for them.[820]

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[815] Testimony No. 300, paras. 16-19.

[816] HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012-2017, 2017, pp. 43-49.

[817] Testimony No. 289.

[818] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice. Both remained unanswered as at the time of submission of the present report.

[819] Case No. CEI60.

[820] FIDH-AMDH, Mali: Justice in process, March 2014, p. 18; Criminal complaint with accompanying civil claim, 21 January 2014; Confidential investigation report of HRPD, MINUSMA, November 2013, paras. 7-9; Confidential documents of HRPD, MINUSMA. On 2 October 2013, the Government launched *Operation Saniya* to put an end to the mutiny. About 20 soldiers of the Malian Armed Forces were arrested and detained at the General Directorate of State Security and at Bamako gendarmerie camp No. 1 before being gradually released. Confidential documents of HRPD, MINUSMA; Confidential documents of a human rights organization; See also FIDH-AMDH, Mali: Justice in process, March 2014, p. 18-20; Criminal complaint with accompanying civil claim, 21 January 2014; ORTM, Restauration de la discipline dans l'armée: le Chef d'Etat Major lance l'opération Saniya dans le camp militaire de Kati, 3 October 2013; ORTM, Le ministre de la défense a assisté à la cérémonie de passation de commandement au camp militaire de Kati).

492. In the hours and days following the mutiny, at least eight soldiers disappeared.[821] On the night of 30 September 2013, four military personnel (a colonel of the Malian Armed Forces, two of his drivers and his bodyguard) were seen for the last time in the company of soldiers close to General Sanogo. That same evening, another (identified) soldier who had told his family that he was on his way to General Sanogo's home was never seen alive again. On 3 October 2013, two other (identified) soldiers – one who had told his relatives that he was on his way to General Sanogo's home and another who had been working there – also disappeared. An (identified) eighth soldier who had indicated that he was on his way to General Sanogo's home disappeared on 4 October 2013.[822]

493. In addition to those disappearances, on the night of 1 to 2 October 2013, two (identified) members of the Malian Armed Forces were tied up and violently beaten by (identified) individuals at the home of General Sanogo and in his presence. One of the two victims was threatened with death and subjected to a mock execution before being taken to General Sanogo's house.[823]

494. In early October 2013, the bodies of two of the missing soldiers were found in the vicinity of the locality of Kati. One of the bodies, discovered in the village of Dougabougou, 15 km from Kati, was exhumed by gendarmes and identified by the victim's family.[824] The second body was left under a false identity at the morgue of the Kati reference health centre on 5 October 2013 and was identified a few days later by the family of the deceased.[825]

495. On 23 February 2014, as part of the judicial investigation into the disappearances of the soldiers, the bodies of five men were exhumed from two mass graves in Bemasso, near Kati. On the same day, bones were also found at the bottom of a well in an enclosed plot in the Malibougou neighbourhood of Kati. On the basis of the forensic analysis carried out as part of the judicial investigation, four of the soldiers who disappeared between 30 September and 3 October 2013 were formally identified through genetic testing. Two of the bodies had blunt-force skull fractures, which could explain the deaths. The head and limbs of another body found had been bound with ropes and wires. The skull had multiple

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[821] According to the information collected during the investigation, other soldiers also disappeared during the same period although it was not possible to confirm that information. In addition, two other bodies that the Commission was unable to identify were found in early October near Kati. According to the gendarmerie, those persons were wearing military uniforms, their heads were covered with a jute bag and they had ligature marks. Confidential documents of HRPD, MINUSMA.

[822] Criminal complaint with accompanying civil claim, 21 January 2014; Confidential document of a human rights organization; Confidential documents of HRPD, MINUSMA.

[823] Confidential documents of HRPD, MINUSMA.

[824] The analysis carried out by the Commission's forensic doctor of the photos of the body found tied up with ropes confirmed the existence of swellings and fairly deep wounds on the scalp that were perimortem in nature. The lesions and blunt force used could have resulted in heavy bleeding and severe intracranial injury, leading to death. The Commission's forensic doctor also explained that, in the absence of an examination of the body and an autopsy, it was not possible to rule out the presence of other fatal injuries that could not be identified and the cause of death could not be determined. Confidential documents collected by the Commission from Kati; Photos of the body of one of the victims; Report of the Commission's forensic doctor; CDNH, Annual report 2013, p. 22; FIDH-AMDH, Mali: Justice in process, March 2014, pp. 18-20; Criminal complaint with accompanying civil claim, 21 January 2014; Confidential documents of HRPD, MINUSMA; Confidential document of a human rights organization.

[825] CDNH, Annual report 2013, August 2014, p. 22; Confidential documents collected by the Commission from Kati; Criminal complaint with accompanying civil claim, 21 January 2014; Confidential document of HRPD, MINUSMA; Confidential document of a non-governmental organization.

bone fractures inflicted by a blunt object.[826] The bones found in a well in Malibougou could be those of the colonel who disappeared on the night of 30 September 2013.[827]

496. The Commission identified 26 individuals who were directly or indirectly involved in the disappearance of the eight soldiers and in the ill-treatment of two others at the home of General Sanogo. Three of those 26 individuals were the subject of the complaint filed by the families of those who had disappeared: (1) a chief warrant officer (who was allegedly directly involved in the disappearance of the colonel and two other soldiers and in one of the two cases of ill-treatment that took place at the home of General Sanogo); (2) a captain (allegedly directly involved in the disappearance of a soldier on 30 September 2013 and in one of the two cases of ill-treatment that took place at General Sanogo's home); and (3) General Amadou Haya Sanogo (whose home was the place to which most of the disappeared persons had said they were going just before they disappeared and who was present when two soldiers were ill-treated). The other 23 individuals either transported one or more of the eight soldiers on the night of their disappearance, beat the two soldiers or were present at the home of General Amadou Haya Sanogo when they were beaten.[828] The names of the 26 individuals are listed in a confidential annex.

497. A criminal complaint accompanied by a civil claim was filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 29 November 2013 and updated in January 2014. The final version of the complaint concerned the eight soldiers who disappeared in late September/early October 2013 and were later found dead. It was filed against General Amadou Haya Sanogo, a chief warrant officer and a captain of the Malian Armed Forces for illegal arrests, kidnappings and murders.[829] On 14 March 2014, the case was referred to the investigating judge of the 2nd Chamber of the Economic and Financial Unit. Forensic analyses were carried out and the judge heard the civil claimants. After submitting a request to the Minister of Defence, the judge was granted access to 48 soldiers. Several of them were arrested and indicted, including General Sanogo. The individuals detained in the case were released in 2017 because the time limit for pretrial detention had expired**.** The most recent steps taken in the investigation date back to May 2018. The case is still not ready for trial because of its scope and because of the number of cases awaiting processing by the Economic and Financial Unit. The court is reportedly about to relinquish jurisdiction over the case to a military tribunal. According to some testimonies, the lack of progress is more closely tied to political considerations, given the influence exerted by General Amadou Haya Sanogo and the lack of genuine political will to combat impunity.[830]

[826]Report of the Commission's forensic doctor, 3 May 2020; Confidential medical documents; FIDH-AMDH, Mali: Justice in process, March 2014, pp. 18-20; and FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, p. 35; See also AI report entitled "Agenda for human rights in Mali", November 2013, p. 11.

[827]However, his death could not be formally confirmed based solely on the presence of the three bones found (three bones of the left leg and right foot).

[828]Criminal complaint with accompanying civil claim, 21 January 2014; Confidential documents of HRPD, MINUSMA.

[829]Criminal complaint with accompanying civil claim, 21 January 2014. The Commission chose to mention the name of Amadou Haya Sanogo because he was indicted and his name was already in the public domain in connection with the case. The Commission was unable to hear his version of events.

[830]FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, p.35; Confidential document of HRPD, MINUSMA; Testimonies Nos. 505 and 506; Interview with source No. 74.

498. In conclusion, the Commission considers that there are reasonable grounds to believe that at least eight soldiers of the Malian Armed Forces disappeared and were subsequently killed between 30 September and 4 October 2013. Two other soldiers were severely beaten at the home of General Sanogo on the night of 1 to 2 October 2013. On the basis of the particularly detailed evidence at its disposal, the Commission attributes responsibility for those events to General Sanogo and a number of soldiers close to him.

ii. 7 March 2015 - Attack on the bar/restaurant "La Terrasse" by the group Al Mourabitoun in the city of Bamako[831]

499. During the night of 6 to 7 March 2015, shortly after midnight, the bar/restaurant "La Terrasse", located in the Hippodrome neighbourhood, in the third precinct of Bamako, was attacked by two armed individuals who arrived by motorcycle. One of the assailants entered the bar/restaurant, while his accomplice waited for him in the street on the motorcycle. The witnesses first heard a loud explosion in the street. Grenade fragments were later found on the wall of a house in front of which an (identified) Malian security guard was killed. Just after the explosion in the street, the assailant who had entered the restaurant a few minutes earlier fired at a French national (identified). A young Malian woman (identified) was killed instantly by a bullet that reportedly ricocheted off the bar. The assailant advanced further into the restaurant and killed the French national, who was lying on the ground, shooting him three times. He then passed by the bar and began to fire at random, injuring at least three Swiss patrons before leaving the premises. Outside the establishment, he shot and killed a man of Belgian nationality (identified) who was trying to hide behind a car. At that moment, a National Police vehicle arrived on the scene. The second assailant, who had remained outside on the motorcycle, threw a grenade at the police vehicle and fled on his motorcycle, leaving his accomplice behind. The first assailant also came across an (identified) police officer and killed him before fleeing in a taxi. While making his escape, he lost a backpack and a grenade.

500. In total, five people – three Malians (a police officer, a security guard at a private residence and a young woman who was in the restaurant), a French national and a Belgian national (all identified) – were killed in the attack and several other people were shot and injured, some of them seriously.[832]

501. The next day, the armed group Al Mourabitoun claimed responsibility for the attack in a video broadcast by the Mauritanian news agency Al-Akhbar.[833] Reliable evidence gathered by the Commission during its investigation shows that the attack was carried out by two men: a Mauritanian national and a Malian national (both identified).[834] It was planned by the two assailants, who had arrived in Bamako in the days prior, and the weapons and grenades were provided by an Al Mourabitoun leader

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[831] Case No. CEI61.

[832] Testimony No. 531; Confidential documents of UNPOL; Confidential court documents. See also RFI, Au moins cinq morts dans une fusillade au cœur de Bamako, 7 March 2015; AI, Mali: Violations and abuses as instability spreads, 2017; Report of the Secretary-General on the situation in Mali (S/2015/219), 27 March 2015. See also RFI, Au moins cinq morts dans une fusillade au cœur de Bamako; RTS Info, Deux militaires suisses blessés dans une attaque à Bamako, 7 March 2015; Le Monde, Mali : un groupe djihadiste revendique l'attaque de Bamako, 7 April 2016.

[833] Al-Akhbar, Le groupe El-Murabitoune revendique l'attentat de Bamako, 7 March 2015 and audio of the claim on Al-Akhbar's YouTube channel. See also confidential court document.

[834] Confidential court documents. See also Le Monde, Les confidences d'"Ibrahim 10", djihadiste au Sahel, 25 February 2019; L'Express, Attentat à Bamako : ce que l'on sait sur l'auteur présumé abattu par la police, 13 March 2015.

(identified).[835] The alleged assailant of Malian nationality was identified and killed by Malian special forces in Bamako on 13 March 2015 in the house the assailants had rented in preparation for the attack.[836] The other alleged assailant, a Mauritanian man claiming to be Mokhtar Belmokhtar’s chief of operations, was arrested in Bamako on 22 April 2016.[837]

502. In conclusion, there are reasonable grounds to believe that the attack on the bar/restaurant “La Terrasse” on the night of 6 to 7 March 2015, in which four patrons of the bar and a police officer were killed and several other people were injured, is attributable to two (identified) members of the Al Mourabitoun group. An investigation was opened immediately afterwards, and is being conducted by the Special judicial unit.[838] When the Commission enquired about the status of the investigation, the Special judicial unit indicated that a referral order against the Mauritanian man had been transmitted to the Attorney General at the Bamako Court of Appeal on 23 December 2019 and the civil claimants were notified on 15 January 2020.[839] As at the date of submission of this report, no trial date has been set.

(C) From the Peace and Reconciliation Agreement to the establishment of the Commission (June 2015-January 2018)

503. The signing of the Peace and Reconciliation Agreement did not bring the crisis in Mali to an end. The armed groups of CMA and GATIA continued to clash regularly, notably in July 2016 and July 2017. From that point onwards, there were no major clashes between the armed groups that had signed the Peace and Reconciliation Agreement. However, there were delays in the implementation of the Peace and Reconciliation Agreement by all signatories.

504. During that third period, while insecurity persisted in the northern regions of Mali (Timbuktu, Kidal, Ménaka, Gao and Taoudéni), the central part of the country (Mopti region and the northern areas of Ségou and Sikasso) became the heart of the crisis. The extremist armed groups whose rise to power had begun in January 2015 continued to expand their activities and influence in central Mali, and their territorial control increased from 2015. They targeted the defence and security forces, the French armed forces, MINUSMA and anyone else representing the Malian authorities or presenting an obstacle to the expansion of their influence. In March 2017, the main armed groups operating in Mali under the banner of Al-Qaida (Ansar Eddine and its Macina and Gourma katibas, Al Mourabitoun, and the AQIM katiba Al-Furqan) merged to form JNIM, led by Iyad Ag Ghaly. Al-Qaida lost its monopoly from 2016 onwards on account of Islamic State in the Greater Sahara (ISGS), which operated in the area of the

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[835] Confidential court document.

[836] Confidential document from a diplomatic source. See also Maliactu.net, Mali : Décès de Mohamed Tanirou Cissé, l’un des co-auteurs de l’attentat de la Terrasse : les Maliens saluent l’efficacité des forces spéciales; Confidential court document; L'Express, Attentat à Bamako : ce que l'on sait sur l'auteur présumé abattu par la police, 13 March 2015.

[837] Ministry of Security and Civil Defence, Arrestation du présumé terroriste Fawaz Ould Ahmed, 22 April 2016; Le Monde, Les confidences d’“Ibrahim 10”, djihadiste au Sahel, 25 February 2019. Confidential court document. The Commission asked the Malian authorities whether it would be possible to meet the Mauritanian man arrested in April 2016, but its request went unheeded. The Commission was therefore unable to interview him or determine where he was being held.

[838] As one of the victims was a French national, an investigation was also opened in France.

[839] Response dated 17 February 2020 from the Malian judicial authorities to the Commission's request of 6 December 2019. The charges brought at that stage were acts of terrorism, financing of acts of terrorism, criminal conspiracy, murder, violence and assault and damage to the movable and immovable property of others.

three borders between Mali, Niger and Burkina Faso (Liptako-Gourma). However, ISGS did not become a key actor in the conflict until after the Commission's temporal mandate ended in January 2018.

505. The "anti-terrorist" operations carried out by the defence and security forces were unable to curb the expansion of the extremist armed groups, despite assistance from the French forces of *Operation Barkhane*. On the contrary, the attitude of the Malian Army on the ground towards the civilian population, particularly the Fulani, made the situation worse. The deteriorating security situation in the area also led to the development of so-called "self-defence" militias, whose stated objective was to defend themselves against extremist armed groups, but which in fact contributed to the development of violence between the communities in the area (Bambara, Dogon and Fulani). The first cases of inter-community violence in the regions of Ségou and Mopti occurred during this third period, although the most violent incidents took place after the establishment of the Commission.

1. Region of Kidal

506. After the Peace and Reconciliation Agreement was signed in 2015, there were fewer clashes between the signatory armed groups that were part of CMA and the Plateforme, but they did not disappear entirely, with clashes continuing to break out until July 2017. The Commission also found that some groups, including MAA-CMA and GATIA, continued to recruit and use children. Attacks attributable to extremist armed groups active in the area (Ansar Eddine, AQIM and, since 2017, JNIM) continued unabated. While MINUSMA was the main target of those attacks, the civilian population in the Kidal region was also affected. Several cases involving MINUSMA or the French forces of *Operation Barkhane* were documented for the period.

507. The Commission notes that the death of the leader of HCUA on 8 October 2016, when his vehicle exploded 300 metres from the MINUSMA and Barkhane camp in Kidal, was another significant incident for the conflict in Mali during that period. He had just left the bi-weekly security coordination meeting with United Nations and Barkhane forces. The Commission is concerned that it has not received any information indicating that a judicial investigation has been opened to establish responsibility in the case.[840]

i. March 2016 - Recruitment and use of children by MAA-CMA[841]

508. According to corroborated information obtained by the Commission from MINUSMA, there are reasonable grounds to believe that in March 2016 children were living in a house used as sleeping quarters by fighters in the MAA-CMA camp in the locality of Aguelhok, Tessalit cercle. On 18 March 2016, an argument broke out between two (identified) boys of Arab origin, aged 15 and 17. According to MINUSMA sources who stepped in immediately after the incident, the two children were jostling with each other and the 15-year-old boy, who was holding a weapon, fired a shot that seriously injured the 17-year-old boy, who died as a result. The victim was in a military uniform and his 15-year-old comrade was in possession of a firearm and ammunition. Both were housed with other MAA-CMA

[840] See MINUSMA, La MINUSMA déplore la mort de Cheikh Ag Aoussa du HCUA suite à l'explosion de son véhicule hier à Kidal, 9 October 2016; Jeune Afrique, Mali : que sait-on sur la mort de Cheikh Ag Aoussa?, 14 October 2016; Testimonies Nos. 432 and 379. The Commission further notes that, despite submitting a formal request, it did not receive a copy of the internal investigation conducted by MINUSMA in relation to the incident.

[841] Case No. CEI101.

fighters at the group's base in Aguelhok.[842] The deceased boy had, according to information gathered by the Commission, been recruited by the group a few months earlier. He had taken part in military training and patrols and manned checkpoints in the commune of Aguelhok. The Commission identified several MAA-CMA commanders at the time of the events, whose names appear in a confidential annex. No judicial proceedings have been instituted against the leaders of MAA-CMA for the recruitment into and association of children with their group.

ii. 18 April 2016 - Incidents during an anti-Barkhane demonstration at Kidal airfield in which two people died and four people were wounded[843]

509. Following the death of five French soldiers of *Operation Barkhane* when their vehicle hit improvised explosive devices on 12 and 13 April 2016,[844] the French forces arrested several (unidentified) individuals in the Kidal region. HCUA reportedly encouraged the local population to protest against the arrests.[845]

510. On Monday, 18 April 2016, at around 8 a.m., a group of about 50 women and young people, including children, gathered at a square about 100 metres from Kidal airfield. They were carrying signs that displayed hostile messages regarding the French forces of *Operation Barkhane*. At around 9.30 a.m., the demonstrators, who had been joined by young men, walked towards the airfield, which was secured by approximately 150 peacekeepers from the Guinean battalion of MINUSMA. At around 9.45 a.m., the demonstrators destroyed a section of the barbed wire fence securing the airfield and attacked the Guinean peacekeepers with stones, including some who had taken refuge in a shelter that served as a watchtower at the entrance to the airfield.[846]

511. At around 10.30 a.m., the Guinean contingent, overwhelmed by an ever-increasing number of demonstrators, was ordered to withdraw to the MINUSMA camp. The Commission notes that the Guinean peacekeepers were not equipped with riot control gear and were visibly overwhelmed by the scale and violent nature of the demonstration. The Guinean peacekeepers who had taken refuge in the watchtower then fired at the ground towards the demonstrators to cover their retreat as they faced an inrush of demonstrators, but also, according to some testimonies, to deter the demonstrators from throwing Molotov cocktails at their shelter. A video posted on Facebook by CMA shows that, as the Guinean peacekeepers withdrew, several shots were indeed fired at the ground in the direction of the demonstrators. The video also shows two men with serious gunshot wounds to the leg and throat on the ground next to a truck belonging to the Guinean battalion.[847] The Commission considers that there are reasonable grounds to believe that the bullets that hit the demonstrators came from shots fired by the Guinean peacekeepers as they retreated.

[842] Confidential document of HRPD, MINUSMA; Photos of the 17-year-old child with gunshot wounds.

[843] Case No. CEI62.

[844] RFI, Trois soldats français tués dans le nord du Mali, un lourd tribut pour Barkhane, 13 April 2016.

[845] Confidential report of HRPD, MINUSMA.

[846] Confidential document of MINUSMA; Confidential report of HRPD, MINUSMA. See also MINUSMA press release, Manifestation ce matin à Kidal, 18 April 2016. MINUSMA, L'équipe d'enquête sur la manifestation violente à Kidal présente ses résultats préliminaires, 26 April 2016.

[847] Confidential document of MINUSMA; Confidential report of HRPD, MINUSMA.

512. At approximately 11.30 a.m., reinforcements arrived in the form of a 64-member MINUSMA police force, which attempted to restore order using, inter alia, 69 tear gas canisters. After a brief retreat, the demonstrators, numbering nearly 500 people, managed to enter the airfield and burned and pillaged some of the MINUSMA facilities. The demonstrators also stole four weapons with fully loaded magazines, a generator and personal effects of MINUSMA soldiers.

513. According to medical sources, two (identified) demonstrators, including a 17-year-old minor, were shot dead and nine others (four identified) sustained gunshot wounds to their lower limbs. Two Guinean peacekeepers were also injured, including one in the head by a stray bullet that probably ricocheted. Investigations revealed that members of the Guinean battalion fired 199 rounds of AK-47 ammunition during the operation.[848]

514. In conclusion, the Commission considers that the peacekeepers of the Guinean battalion of MINUSMA were visibly overwhelmed by the scale and violent nature of the demonstration. On the basis of all the evidence in its possession, the Commission is of the view that there are reasonable grounds to believe that the shots fired by the Guinean peacekeepers as they retreated killed and injured protesters, and that the threat did not justify the use of potentially lethal force. On 26 April 2016, an internal investigation team submitted a preliminary report on the events to the Special Representative of the Secretary-General for Mali and Head of MINUSMA.[849] Furthermore, a joint investigation team established by the Special Representative visited Kidal from 6 to 9 May 2016 to investigate the incidents. It submitted its report to the Special Representative that same month.[850]

[848] Confidential document of MINUSMA.

[849] MINUSMA, Manifestation ce matin à Kidal, 18 April 2016; MINUSMA, L’équipe d’enquête sur la manifestation violente à Kidal présente ses résultats préliminaires, 26 April 2016.

[850] Confidential document of MINUSMA.

iii. 6 June 2016 - Pillaging of a World Food Programme warehouse in the city of Kidal attributable to GATIA and its sympathizers [851]

515. The Commission has reasonable grounds to believe that, on 6 June 2016, the food warehouse used by the World Food Programme (WFP) for humanitarian assistance, located in the city centre of Kidal, was pillaged by members of GATIA and Kidal inhabitants who were sympathizers of the armed group.[852]

516. The incident took place against a backdrop of significant political tensions between GATIA, the sole representative of the Plateforme in Kidal, and the armed groups of CMA, which largely administered the city of Kidal and had mostly controlled the area since May 2014. Those tensions came to a head, inter alia, over the criteria and arrangements for the distribution of humanitarian aid in the region. Although the criteria and arrangements were decided by a humanitarian committee, in which the armed groups participated, GATIA opposed the procedure adopted by the committee whereby food was handed over to heads of local administrative units called *fractions* for redistribution to previously identified vulnerable populations. GATIA accused the armed groups of CMA of unfairly benefiting from those distribution arrangements and wanted the food to be divided equally among armed groups, which would then be responsible for distributing it to their sympathizers who were in need.[853] The organization IEDA-Relief, which had been chosen by WFP to carry out its humanitarian activities in Kidal, could not agree to that proposal, since it was contrary to the principles laid down by WFP for the distribution of food aid.[854] According to GATIA, which did not, however, provide any supporting evidence, IEDA-Relief favoured CMA. The situation was at an impasse, there were food shortages, the people were becoming impatient and no satisfactory solution seemed in sight.

517. On the morning of 6 June 2016, a representative of GATIA (identified) once again visited the premises of IEDA-Relief to complain about an initial round of food distribution and the arrangements for the second round that was due to take place. While he was in the office, between 100 and 200 people who were members or sympathizers of GATIA broke down the warehouse door and stole an unspecified amount of food, consisting of millet, rice, maize, oil, salt, beans, peas and soap. According to several sources, the first people to force open the store were members of GATIA (community leaders), who then gave free rein to civilian sympathizers who were on the premises.[855] The Office for the Coordination of Humanitarian Affairs (OCHA) in Mali publicly condemned the pillaging in a statement issued the same day, saying that "[…]the pillaged goods were intended to cover food rations for a month for 11,000 vulnerable people across the 11 communes of the Kidal region. The first round of distributions for the year 2016 was scheduled to start in the coming days and other monthly distributions were planned until the end of the year."[856]

[851] Case No. CEI63.

[852] Confidential report of HRPD, MINUSMA; Testimony No. 449; OCHA, The Humanitarian Coordinator in Mali strongly condemns the pillaging of a warehouse of humanitarian goods in Kidal, 7 June 2016. See also France 24, Pillage d'un dépôt de nourriture, signe des tensions à Kidal, 7 June 2016; Bamada.net, Kidal : Pillage d'un entrepôt de vivres destinés à l'aide humanitaire, 7 June 2016.

[853] Testimony No. 503.

[854] Testimonies Nos. 473 and 503. See also confidential document of HRPD, MINUSMA.

[855] Confidential document of HRPD, MINUSMA; Testimony No. 473; See also testimony No. 503; OCHA, The Humanitarian Coordinator in Mali strongly condemns the pillaging of a warehouse of humanitarian goods in Kidal, 7 June 2016.

[856] OCHA, The Humanitarian Coordinator in Mali strongly condemns the pillaging of a warehouse of humanitarian goods in Kidal, 7 June 2016.

518. When questioned about the incident, GATIA leaders did not deny the pillaging of food supplies or the involvement of the group's sympathizers. They stated, however, that the military branch of GATIA had not been involved in the incident. The instigators had reportedly been community leaders (heads of *fractions*) who were GATIA sympathizers and were frustrated by the fact that CMA sympathizers had, according to them, already helped themselves in the warehouse in advance of the official distribution. GATIA leaders said that they had spoken with the heads of *fractions* after the incident and noted that there had been no recurrence since. They also said that they had strongly condemned the pillaging, returned some of the stolen food items and apologized to the humanitarian actors.[857] The Commission notes that, on the basis of the information in its possession, no investigations or judicial proceedings have been initiated to identify those responsible for the pillaging.

iv. 30 November 2016 - An 8-year-old boy killed by a helicopter of the French forces of *Operation Barkhane* in the area of Tibaguaten, near Aguelhok[858]

519. On 30 November 2016, an (identified) 8-year-old child from the Tuareg community was killed by a shot fired from a helicopter belonging to the French armed forces of *Operation Barkhane* that was operating in the area of Tibaguaten, near Aguelhok.

520. The use of force against the child was not disputed by the French armed forces. According to the findings of an internal investigation conducted by the Ministry of Defence of France, which were made public on 30 November 2017, the French armed forces explained that, on that day, in the area around Aguelhok, the Barkhane force had identified a network of lookouts who "were sharing information about a French Army logistical convoy that was approaching the area to enable those laying improvised explosive devices to kill French soldiers". It was therefore decided that a helicopter patrol would be dispatched to put an end to the threat posed by the lookouts. That intervention resulted in the use of force and the "neutralization" of one of the lookouts. According to the French authorities, the action that led to the "neutralization" of the lookout was consistent with the law of armed conflict and the operational rules followed by the Barkhane force. While expressing regret at the child's death, the spokeswoman for the Ministry of the Armed Forces said that "in the operational context of the moment, it seemed legitimate to put an end to a hostile intent towards the force".[859]

521. However, information collected on the ground in relation to the child's death clearly contradicts that version of events. That day, the boy, the son of a Tuareg family, had been sent by his father to fetch donkeys to use them to carry water from the well. People interviewed stated unanimously that the child had had no links to any armed groups. Having had no news of his son and hearing helicopters and gunfire, around 1 p.m. and 2 p.m. the victim's father went to look for him. Carrying the empty water bottles, he went to the well, which was less than 10 minutes' walk away. He found a donkey, which he used to carry water and returned to the camp an hour later, with no news of his son. At sunset, panic-stricken, he went to three nearby camps to look for his son but was unable to find him. He continued his search the next morning, 1 December 2016, but without success. It was not until 2 December that a

[857] Testimony No. 503.

[858] Case No. CEI64.

[859] The report of the press conference held by the spokeswoman of the Ministry of Armed Forces on 30 November 2017 on the findings of the internal investigation is available on the Reuters website. Reuters, Une enquête blanchit l'armée française pour le mineur tué au Mali, 30 November 2017. Those public findings were confirmed to the Commission by the Ministry of the French Armed Forces. Confidential document from a diplomatic source.

small, shallow grave and bullet marks on the ground were discovered and the child's body was identified by family members.[860]

522. One witness stated that, after the shooting, at around 3 p.m. or 4 p.m., approximately seven French soldiers had been dropped off by a helicopter near the camp in Tibaguaten. Three of them walked to a location east of the helicopter landing site and began to dig a hole in the ground as the witness watched them from a place with good visibility 60 to 70 metres away. He said that he had seen them put something in the hole that they had dug, and that he had then lain down under a rock out of fear. After the soldiers left, he was too afraid to go and see what they had buried. It was only after he had heard the news of the child's disappearance that he made the connection between the two events. When he went to offer his condolences to the bereaved family, the child's father allegedly told him that the child's body had been found with gunshot wounds, wrapped in a blue cloth with a stick.[861] The French authorities acknowledged that, after the shooting, French soldiers had gone to the scene, had noted that the "lookout" was a minor and had then buried the body. Indeed, in accordance with the procedures currently in place within the French armed forces and with the international commitments of France, the soldiers of *Operation Barkhane*, where circumstances and tactical capabilities permit, are required to identify and take (security and sanitation) measures to protect enemy remains in the combat zone.[862] Members of the local community were particularly shocked by the burial of the child's body, which they interpreted as a lack of respect for the family and for the community, and as an attempt to conceal the body.[863]

523. Based on the account of the French authorities, the Commission could not determine which facts or circumstances had enabled them to conclude that the child had been a lookout belonging to an armed group and that the principles of the law of armed conflict had been respected. However, based on the evidence collected during the investigation, the Commission considers that there are reasonable grounds to believe that the child was not a lookout and did not belong to an armed group. Given the widely conflicting accounts put forward, it would be in the interests of the family and of the French armed forces if a thorough and independent judicial investigation were conducted into the incident. Such an investigation would also respond to the local community's demands for explanations and apologies.[864]

v. 2015–2017 – Attacks against MINUSMA in the region of Kidal

524. During the third phase of the crisis, MINSUMA continued to be the target of many fatal attacks in the region of Kidal claimed by or attributed to Ansar Eddine and JNIM (since March 2017). Some examples are presented below.[865] One such attack resulted in violence by MINUSMA troops against a child and against two men suspected by the troops of having participated in the attack.

28 November 2015 – Mortar attack against the MINUSMA camp in Kidal by Ansar Eddine[866]

[860]Three confidential testimonies collected by HRPD, MINUSMA; Testimony No. 436.

[861]Two confidential testimonies collected by HRPD, MINUSMA.

[862]Confidential diplomatic document.

[863]Testimony No. 436; three confidential testimonies collected by HRPD, MINUSMA.

[864]Two confidential testimonies collected by HRPD, MINUSMA.

[865]See Annex 2, Table of attacks against MINUSMA – August 2013–January 2018.

[866]Case No. CEI65.

525. On 28 November 2015, at approximately 3 a.m., seven 120-millimetre mortar shells fired from nearby hills (an unidentified location within a maximum radius of 5 to 7 kilometres) exploded inside the MINUSMA camp in the city of Kidal, near the buildings of the Guinean battalion, the Bangladeshi company and the base petrol station. Two Guinean peacekeepers and two international contractors from MINUSMA (all identified) were killed in the attack. Nine peacekeepers were seriously injured, and 11 peacekeepers and 2 MINUSMA civilian personnel (all identified) suffered more minor injuries. A rapid response unit of the Chadian battalion was immediately sent on patrol near the base but was unable to determine who had fired the shots or where they had come from.[867] Hamadou Ag Khallini, an Ansar Eddine leader, later claimed responsibility for the attack.[868] In response to the Commission's request for information on investigations and prosecutions carried out by the Malian authorities in connection with the attack, MINSUMA indicated that it had none.[869]

12 February 2016 – Complex attack against the MINUSMA camp in Kidal by Ansar Eddine[870]

526. On 12 February 2016, at around 6.50 a.m., as a convoy of Guinean peacekeepers from MINUSMA was preparing to leave the MINUSMA camp in the city of Kidal through the south gate, approximately 10 mortar shells were fired at the camp. It was not possible to identify where the shots had come from or who had fired them. While the personnel who had been stationed at the south gate were looking for cover, an armoured vehicle filled with explosives ploughed through the gate, drove about 300 metres into the camp and exploded in front of the camp of the Guinean contingent, killing 7 Guinean peacekeepers and injuring 19 others, as well as 1 Chadian peacekeeper. A few days later, Ansar Eddine released a 15-minute video in which it claimed the attack, attributing direct responsibility to a Mauritanian named Mohamed Abdallah Ould Houzeifa El-Hosni.[871] In response to the Commission's request for information on investigations and prosecutions carried out by the Malian authorities in connection with the attack, MINSUMA indicated that it had turned over the remains of two of the attackers to the Malian authorities.[872]

18 May 2016 – Attack against MINUSMA by AQIM 15 kilometres from Aguelhok and violence leading to the death of a Tuareg shepherd suspected of having participated in the attack[873]

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[867] Confidential documents of MINUSMA. See also MINUSMA press release, Attack against MINUSMA this morning in Kidal, 28 November 2015. Report of the Secretary-General on the situation in Mali (S/2015/219), 24 December 2015, para. 19.

[868] Confidential documents of MINUSMA. See also Le Parisien, Mali: Un groupe jihadiste revendique l'attaque meurtrière d'une base de l'ONU, 28 November 2015.

[869] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[870] Case No. CEI66.

[871] Confidential documents of MINUSMA. See also MINUSMA press release, Attack against MINUSMA this morning in Kidal, 12 February 2016. RFI, Mali: mobilisation de la MINUSMA après l'attaque du 12 février à Kidal, 29 February 2016. MINUSMA, Visite au camp de la MINUSMA à Kidal le lendemain de l'attaque du 12 février 2016.

[872] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[873] Case No. CEI67.

527. On 18 May 2016, at around 7.30 a.m., a MINUSMA supply convoy composed of approximately 40 empty trucks left the MINUSMA base in the locality of Tessalit, Kidal region, for the city of Gao via the localities of Aguelhok and Anéfis. The convoy was being escorted by a detachment of the Chadian battalion of MINUSMA comprising 39 soldiers, who were travelling in 10 vehicles. At approximately 4 p.m., when the convoy was approximately 15 kilometres north of the locality of Aguelhok in the region of Kidal, one of the trucks in the convoy struck a mine, but no one was injured. The Chadian peacekeepers then took up a defensive position around the convoy and performed route checks using mine detectors. About 30 minutes later, as the convoy was preparing to resume its journey, a Toyota pickup truck containing seven Chadian peacekeepers struck another mine as it was positioning itself at the front of the convoy. The explosion, which was extremely powerful, threw the vehicle more than 15 metres, killing five of the occupants instantly and severely injuring three others (identified). One of the injured persons died of his injuries at the hospital in Dakar where he had been taken a few days after the incident. On the same day, the armed group Ansar Eddine, through one of its leaders, Nourredine Ag Mohamed, claimed responsibility for the attack.[874]

528. A few minutes after the second explosion, four Chadian soldiers in a pickup truck spotted a 50-year-old Tuareg man, his 12-year-old son and his 20-year-old Tuareg nephew (both identified) moving away with their animals from the site of the explosion. At the request of the convoy commander, a Chadian captain (identified), the two men and the boy were arrested and searched by the Chadian soldiers and were then turned over to the commander near the site of the explosion for questioning. As they spoke neither French nor Arabic, the two men and the boy were unable to communicate with the Chadian soldiers from MINUSMA. Under the supervision of the convoy commander, they were tied up and violently beaten on the head with rifle butts by multiple Chadian soldiers (identified). The 50-year-old man received a particularly violent blow to the face with a rifle butt, resulting in a deep wound and bleeding. At around midnight, at the request of MINUSMA, a helicopter belonging to the French forces of *Operation Barkhane* based in the locality of Tessalit came to rescue the injured persons and take them to the hospital. The Chadian soldiers nevertheless hid the presence and health status of the three prisoners from the leadership of the MINUSMA camp in Kidal and from the French soldiers. The next morning, at around 10:00 a.m., the 50-year-old man died.[875]

529. On the same day, MINUSMA ordered an internal investigation into the circumstances of the attack on the convoy and into the death of the Malian victim. In the conclusions of that investigation, the facts set out above were confirmed and, in particular, it was determined that the convoy could not have been shot at, contrary to some testimonies by peacekeepers. It was also determined that the Chadian captain who had led the convoy was responsible for the ill-treatment of the three Tuareg detainees and for the death of the deceased detainee.[876]

530. On 22 May 2016, the body of the 50-year-old Tuareg man was handed over to the Gendarmerie and to the deputy prosecutor of Gao for "autopsy, burial and appropriate judicial follow-up". The other

[874] Confidential documents of MINUSMA; RFI-Afrique, L'attaque a été revendiqué jeudi par le groupe jihadiste Ansar Dine, 19 May 2016; Opex360, Mali: Le groupe jihadiste Ansar Dine revendique l'attaque qui a coûté la vie à 5 casques bleus tchadiens, 20 May 2016. RFI, Mali: des militaires tchadiens de la Minusma ont-ils commis une bavure?, 25 May 2016.

[875] Confidential documents of MINUSMA; Jeune Afrique, Mali: l'ONU promet la transparence sur la mort d'un civil détenu par les casques bleus, 28 mai 2016.

[876] Confidential documents of MINUSMA.

two detainees were turned over to the Malian authorities and were released several days later owing to a lack of incriminating evidence. MINUSMA escorted them, together with the body of the deceased man, back to their village of origin. The Organization apologized for the death of the Tuareg man.[877]

531. MINUSMA indicated that, although it had sent several notes verbales to the Malian authorities, the latter had not provided it with the victim's autopsy report. In addition, in response to the Commission's request for information on arrangements made by MINUSMA for the possible judicial prosecution by the relevant authorities of the soldiers suspected in the victim's death, the Mission indicated that it had no information on the existence of any ongoing legal proceedings.[878]

8 June 2017 – Simultaneous attack against the MINUSMA base and the "Uranus" outpost of the Guinean battalion of MINUSMA in Kidal [879]

532. On 8 June 2017, at around 6 p.m., the siren of the MINUSMA mortar fire warning system sounded throughout the MINUSMA camp in the city of Kidal. Approximately 15 seconds later, a mortar shell hit the camp and all personnel headed to the bunkers for protection. A total of four heavy mortar shells and one rocket struck the camp, injuring five MINUSMA civilian personnel, and five more mortar shells fell outside the camp. Simultaneously, the outpost of the Guinean battalion of MINUSMA, which had been established a few kilometres from the central camp to protect it from mortar fire, was also attacked by armed men (unidentified) driving four pickup trucks and motorcycles flying the flags of extremist armed groups. Two Guinean peacekeepers (identified) who had taken refuge in a transport vehicle were killed after the vehicle was struck by a 120-millimetre rocket. Two other soldiers (identified) who had been wounded by the same rocket were killed by the attackers with automatic rifles as they attempted to flee. The last three soldiers who had been stationed at the outpost (identified) were also injured but managed to return to the MINUSMA camp alive. During the attack on the outpost, the attackers stole items such as a pickup truck of the Guinean battalion, which was armed with a 12.7-millimetre machine gun and ammunition.[880] The attack was claimed the following day by JNIM, which was led by Iyad Ag Ghaly.[881] On 9 March 2018, MINUSMA sent a note verbale to the Government of Mali informing it of the many attacks against its facilities and against its civilian and military personnel since 7 August 2016, and requesting investigations and prosecutions of the persons who had carried out and ordered those attacks. In response to a request from the Commission, MINUSMA indicated that it had received no reply from the Malian authorities.[882]

[877] Confidential documents of MINUSMA.

[878] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[879] Case No. CEI68.

[880] Confidential documents of MINUSMA. See also MINUSMA, Attaque contre la MINUSMA à Kidal, 9 June 2017; RFI, Mali: trois casques bleus tués dans une attaque à Kidal, 9 June 2017.

[881] RFI, Mali: trois casques bleus tués dans une attaque à Kidal, 9 June 2017.

[882] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

vi. 2015–2018 – Use of improvised explosive devices and presence of explosive remnants of war in the region of Kidal[883]

533. The Commission documented many attacks using improvised explosive devices against civilians and international armed forces in the region of Kidal.[884] Since 2013, more than 300 such incidents have been recorded in the region of Kidal alone, almost all of them involving civilians or MINUSMA peacekeepers.[885] The Commission has selected a few representative examples.

Peacekeeper victims of improvised explosive devices

534. The planting of improvised explosive devices, in particular along the main communication routes in the region, remains a major threat to the international forces deployed in Mali and is the leading cause of death of MINUSMA peacekeepers. Between 2013 and 2018 (inclusive), 42 peacekeepers died and 226 more were injured following the explosion of improvised explosive devices near their vehicles. The vast majority of the victims were members of the Chadian battalion of MINUSMA.[886]

535. For example, on 1 March 2016, at approximately 1 p.m., an improvised explosive device detonated in the path of a vehicle of the Chadian battalion of MINUSMA along the Aguelhok-Tessalit route, seriously injuring six peacekeepers. Ansar Eddine claimed responsibility for the attack.[887] On 7 August 2016, at approximately 6.50 a.m., an improvised explosive device exploded in the path of another vehicle of the Chadian battalion of MINSUMA, which had been escorting a logistics convoy, approximately 11 kilometres south of Aguelhok, killing one peacekeeper and injuring four others. Ansar Eddine claimed responsibility for that attack as well.[888] Shortly thereafter, at approximately 9.15 a.m., another improvised explosive device detonated in the path of a MINUSMA vehicle on patrol two kilometres east of the MINUSMA camp in Kidal, causing only material damage.[889]

536. On 5 February 2017, an improvised explosive device exploded in the path of a vehicle of the Chadian battalion of MINUSMA, which had been escorting a logistics convoy, 32 kilometres south-west of Tessalit as it was heading to Aguelhok, seriously injuring four peacekeepers. No one claimed responsibility for the attack.[890] On 5 September 2017, at approximately 2 p.m., an improvised explosive device exploded in the path of another vehicle of the Chadian battalion of MINUSMA approximately

[883] Case No. CEI69.

[884] Testimonies Nos. 419, 420 and 446.

[885] See Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[886] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[887] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA, Engin explosif: 6 casques bleus blessés dans le nord du Mali, 1 March 2016.

[888] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA; JOC, MINUSMA, Table of attacks against MINUSMA. See also MINUSMA, Une attaque contre un convoi de la MINUSMA fait un mort parmi les casques bleus de la région de Kidal, 7 August 2016; UN News, Mali: l'ONU condamne une attaque meurtrière contre un convoi de la MINUSMA, 7 August 2016.

[889] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA; JOC, MINUSMA, Table of attacks against MINUSMA. See also MINUSMA, Une attaque contre un convoi de la MINUSMA fait un mort parmi les casques bleus de la région de Kidal, 7 August 2016.

[890] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA; JOC, MINUSMA, Table of attacks against MINUSMA. See also AA, Mali: 4 Casques bleus blessés dans l'explosion d'une mine, 5 February 2017.

15 kilometres from Aguelhok as it was heading towards Tessalit, killing two peacekeepers and seriously injuring two others. No one claimed responsibility for the attack.[891] On 26 October 2017, at approximately 2.30 p.m., an improvised explosive device detonated in the path of another vehicle of the Chadian battalion of MINUSMA, which had been escorting a logistics convoy, along the Aguelhok-Tessalit route, instantly killing three peacekeepers and seriously injuring two others. One of the injured persons died of his injuries the following year. JNIM claimed responsibility for the attack.[892]

[891]Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA; JOC, MINUSMA, Table of attacks against MINUSMA; See also MINUSMA, Explosion de mine: 2 casques bleus tués, 2 grièvement blessés, 5 September 2017.

[892]Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA; JOC, MINUSMA, Table of attacks against MINUSMA; See also MINUSMA, Explosion de mine: 3 Casques bleus tués dans le nord du Mali, 26 October 2017.

Civilian victims of improvised explosive devices and explosive remnants of war

537. While improvised explosive devices planted by extremist armed groups in the region of Kidal were mainly aimed at international forces, in particular MINUSMA, such devices also caused many casualties among the civilian population along roads in the region. Between 2013 and 2018, in the region of Kidal alone, improvised explosive devices killed at least 19 civilians and injured 69 others.[893]

538. During its field investigations in Kidal, the Commission interviewed a number of individuals who had survived the explosion of improvised explosive devices near their vehicles but continued to live with the permanent physical and psychological effects of those incidents.[894] For example, on 26 February 2014, an improvised explosive device detonated in the path of the vehicle of an employee of an international NGO in the vicinity of Kidal Airport, causing permanent damage to the employee's fingers and seriously injuring his driver.[895]

539. One witness also recounted how, in 2014, near Achibrich, about 250 kilometres from Kidal towards Algeria, an explosive device had detonated in the path of the minibus in which he had been travelling with seven other people, seriously wounding five of the passengers. The witness himself had his leg amputated in Algeria and could not return to Mali until three years later.[896]

540. On 20 April 2014 in Amassin, in the commune of Anéfis, explosive devices detonated after being found by children in a former training camp of Ansar Eddine, killing two children aged 6 and 8 and a man aged 25.[897]

541. On 6 May 2015, approximately two hours after an attack on the MINUSMA camp in Kidal, an explosive device detonated in the path of a civilian vehicle, seriously injuring the driver (identified) and another person (identified). The driver lost consciousness from the shock of the explosion. When he regained consciousness, he saw that his leg had been crushed. His relatives quickly took him to the MINUSMA base for medical treatment. Although the MINUSMA doctors managed to save his life, they were forced to amputate his leg, which had been severely damaged.[898]

542. On 13 January 2017, an improvised explosive device exploded and instantly killed two civilians (identified) riding their motorcycles in the Etambar neighbourhood of the city of Kidal. According to the Coordination Sécuritaire des Mouvements de l'Azawad–Kidal, the device had been planted by members of AQIM in a neighbourhood where a number of MNLA military commanders lived.[899]

543. From medical sources, the Commission confirmed the frequency of such incidents and the number of child victims in the region. Without knowing all the details of the incidents in question, the Commission also confirmed that, on 13 August 2016, two boys had been seriously injured after a device

[893] Annex 4: Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[894] Testimonies Nos. 419 and 420.

[895] Testimony No. 186; see also confidential document of HRPD, MINUSMA.

[896] Testimony No. 419.

[897] Confidential document of HRPD, MINUSMA.

[898] Testimony No. 420; medical documents. See also MINUSMA, Attack against MINUSMA camp in Kidal, 6 May 2015. See also AA, Deux civils blessés par une explosion à proximité d'un camp de la MINUSMA à Kidal, 6 May 2015.

[899] Confidential document of HRPD, MINUSMA.

exploded in Kidal. One of them, an 11-year-old, was hospitalized until November 2016 after losing his right arm and sustaining a fracture to his left femur following the incident.[900] On 9 September 2016, a nine-year-old child from Aguelhok lost his left hand after a device exploded.[901] On 22 September 2016, three men and a 16-year-old boy from Tinzawatene (a commune near the border between Mali and Algeria) were also seriously injured after a device exploded.[902]

544. Although the individuals responsible for carrying out and ordering the planting of improvised explosive devices along roads often remain unknown, as incidents involving civilians are not often claimed, the Commission has reasonable grounds to believe that extremist armed groups operating in the region of Kidal were responsible for the majority of such incidents. Indeed, the Commission notes that many of the attacks using improvised explosive devices against international forces were claimed by extremist armed groups, in particular Ansar Eddine, AQIM and, since 2017, JNIM.

545. Consequently, the Commission has reasonable grounds to believe that members of extremist armed groups, in particular Ansar Eddine, AQIM and, since 2017, JNIM, planted many mines and improvised explosive devices along the main roads of the region of Kidal, killing a number of civilians and MINUSMA peacekeepers and injuring many others.

vii. June–August 2017 – Clashes between CMA armed groups and GATIA in the areas of Anéfis and Takelotte[903]

546. Despite the signing of the Agreement on Peace and Reconciliation in Mali by CMA and the Plateforme in May and June 2015, and one year after the most recent clashes, which had occurred in July 2016, CMA armed groups and GATIA clashed in June and July 2017 in a number localities in the region of Kidal, in particular in July 2017 in the area of Anéfis. During the clashes in the Anéfis area, CMA groups recaptured the city of Anéfis from GATIA. On 26 July 2017, CMA groups and GATIA again clashed in Takelotte, where GATIA had a base, and the CMA groups captured the locality. A 15-day truce agreement was reached on 23 August 2017 and was extended on 6 September 2017 for one month. Following reconciliation talks held from 15 to 20 September 2017, CMA and the Plateforme signed a document of commitments providing for, inter alia, the cessation of hostilities.[904] Since that agreement, no serious clashes have been reported between CMA groups and GATIA. In addition to the

[900] Confidential medical documents.

[901] Confidential medical documents.

[902] Confidential medical documents.

[903] Case No. CEI70.

[904] Confidential documents of the United Nations police and of the MINUSMA force. See also Jeune Afrique, Mali: la CMA et la Plateforme violent à nouveau le cessez-le-feu, 28 July 2017, RFI, Mali: affrontements dans la région de Kidal entre les signataires de l'accord de paix, 7 July 2017. Testimony No. 448. It should be noted that, prior to those clashes, it had been decided to establish the Operational Coordination Mechanism in Kidal by 20 July 2017. However, due to the clashes, that deadline was not met. After the good offices mission conducted by Mahmoud Dicko, head of the Islamic High Council, at the end of July 2017, the CMA groups advocated the initial deployment of a partial operational coordination mechanism to Kidal, excluding Plateforme representatives, while the Plateforme insisted on full-fledged deployment and on a regional power-sharing arrangement. Report of the Secretary-General on the situation in Mali (S/2017/811), 28 September 2017.

significant loss of life caused,[905] the Commission considered two of the allegations of abuse and crimes received in connection with the clashes.[906]

8 June 2017 – Alleged summary executions attributable to GATIA

547. The CMA armed groups accused members of GATIA of committing abuses and crimes in the area of Kidal under their control in the weeks prior to the clashes. The alleged abuses, which reportedly took place between the end of May 2017 and 10 June 2017, included theft or destruction of vehicles, livestock theft, maiming, abductions and summary executions. In one of its reports, CMA requested that the Peace and Reconciliation Agreement Monitoring Committee and MINUSMA verify those allegations.[907]

548. In mid-July 2017, just after Anéfis had been recaptured by CMA armed groups, the Human Rights and Protection Division of MINUSMA carried out a mission to the area during which it confirmed the existence of what appeared to be two recent graves in the locality of Adjarak, 34 kilometres north of Anéfis. According to four sources who lived nearby and to two CMA representatives, five civilians were buried in one of the graves and two in the second. According to information provided by members of CMA, those individuals (identified) had been arrested by GATIA in different localities in the area, had been transferred to Anéfis and had been shot and killed there by members of GATIA on 8 June 2017. However, mission personnel were unable to interview the three nomads who claimed to have witnessed the scene, who had allegedly buried the bodies and then reported the incident. The Human Rights and Protection Division confirmed from other sources that some of the victims had disappeared or had been arrested by the Plateforme. However, it was impossible to conclude from that information that they had been executed and buried by GATIA at the location in question.[908]

549. CMA and GATIA presented the Commission with contradictory accounts of the origin of the graves. CMA confirmed the information contained in its July 2017 report and stated that the 2017 clashes had been caused by crimes against the local population and by pressure exerted by GATIA. However, according to GATIA, the existence of mass graves related to the conflict in the Anéfis zone in July 2017 could plausibly have been caused by the violent clashes between GATIA and CMA groups

[905] No official casualty figures are available for those clashes, and the information provided by the groups at the time of the events is largely contradictory. It is certain that the clashes resulted in the death and injury of at least a few dozen members of armed groups. See for example, Le Figaro avec AFP, Mali: Lourdes pertes pour les pro régimes, 27 July 2017; Jeune Afrique, Mali: risque d'escalade après les affrontements meurtriers près de Kidal, 28 July 2017; BBC, Mali: 20 morts dans des affrontements, 28 July 2017.

[906] See report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017) (French), February 2018, paras. 46, 87; MINUSMA press release of 5 August 2017; MINUSMA,Video of the interview conducted with Guillaume Ngefa, Director of HRPD, MINUSMA, on 10 August 2017.

[907] Report produced by the CMA defence and security commission on 11 June 2017 concerning extrajudicial executions, cremation of bodies, enforced disappearances and dispossession of property belonging to residents of the regions of Ménaka, Gao and Kidal between March and June 2017. The report was sent to the Peace and Reconciliation Agreement Monitoring Committee, the Human Rights and Protection Division of MINUSMA, the MINUSMA office in Kidal and the French forces of *Operation Barkhane*.

[908] Confidential investigation report of HRPD, MINUSMA; confidential testimonies collected by HRPD, MINUSMA. See also report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017) (French), February 2018, paras. 46, 87; MINUSMA press release of 5 August 2017. MINUSMA,Video of the interview conducted with Guillaume Ngefa, Director of HRPD, MINUSMA, on 10 August 2017.

at the time, which had resulted in the deaths of many fighters, who were buried immediately where they fell. GATIA stated that it was disputes over the management and control of power in the city of Kidal and in the surrounding area that had led to the outbreak of the hostilities.[909] The Commission considers that the allegations of CMA and the findings of the Human Rights and Protection Division of MINUSMA concerning the existence of the two graves are very serious and merit an impartial and thorough judicial investigation. Unless the bodies are exhumed and subjected to a forensic examination in the context of an impartial judicial investigation in order to determine the truth and eliminate any risk of disinformation, it will not be possible to verify the allegations of CMA.

[909] Testimonies Nos. 503, 511 and 448.

At least nine children among the members of GATIA in the context of clashes in Takelotte

550. During clashes between GATIA and CMA armed groups in Takelotte on 26 July 2017, at least 33 GATIA fighters were taken prisoner, including 9 boys of Tuareg origin aged between 15 and 17 (identified).[910] The boys were detained in Kidal by the CMA groups until 11 August 2017, when they were handed over to MINUSMA. According to credible testimonies obtained by the Commission, the boys were recruited by GATIA between four days and a year and a half before the clashes in Takelotte. At least eight of them stated that they had fought for GATIA in at least one clash. In addition, one of the nine boys had already been separated from the armed group the previous year in Kidal.[911] Indeed, during clashes between CMA groups and GATIA on 21 July 2016, four boys aged between 13 and 17 had requested assistance from MINUSMA in Kidal after the GATIA convoy with which they had been travelling, which had been on its way to reinforce GATIA troops in Kidal, had been attacked by CMA groups.[912] MINUSMA and UNICEF coordinated the transfer of a number of the boys arrested by CMA in 2017 to Bamako, where they were placed under the supervision of the National Directorate for the Protection of Children and Families.

551. GATIA did not confirm the presence of children among its members. It indicated that the boys who had been arrested that day by CMA groups were children who had been living with their parents in camps in Takelotte, and that they were neither armed nor members of GATIA. GATIA stated that it was the Plateforme's policy not to recruit fighters under the age of 18. It therefore denied that the children could have acknowledged having taken part in the clashes and asserted that any statements to that effect had been made "under pressure".[913]

552. In conclusion, despite the denials of GATIA, there are reasonable grounds to believe that the armed group recruited and used children in the context of the clashes in Takelotte on 26 July 2017. On the basis of the information in its possession, the Commission notes that no investigation or legal proceedings have been conducted or initiated by the Malian authorities regarding those events.

2. Region of Timbuktu

553. The Timbuktu region has been relatively spared from conflict-related abuses since the Peace and Reconciliation Agreement was signed. Nevertheless, there is still insecurity in the region, and crimes of opportunity remain prevalent. In connection with its mandate, the Commission noted that extremist armed groups repeatedly attacked MINUSMA and the Malian armed forces, which prevented them from venturing far from their bases. Two incidents in which the Malian Armed Forces and GATIA targeted civilians belonging to extremist groups, against the backdrop of that extremely precarious security situation, were documented.

[910] MINUSMA,Video of the interview conducted with Guillaume Ngefa, Director of HRPD, MINUSMA, on 10 August 2017. Report of the Secretary-General on the situation in Mali (S/2016/819), 29 September 2016, pp. 41–42; Testimony No. 511.

[911] Testimony No. 228 and documents from the witness. See also testimony No. 223.

[912] Confidential documents of HRPD, MINUSMA.

[913] Testimony No. 503.

i. 2 July 2015 – Attack by AQIM on a convoy of the Burkina Faso battalion of MINUSMA 45 km south of Timbuktu[914]

554. At around 9 a.m. on 2 July 2015, a seven-vehicle convoy carrying 27 peacekeepers from the Burkina Faso battalion of MINUSMA was escorting approximately 30 peacekeepers from the battalion who were on leave from the locality of Goundam (Goundam cercle) to Timbuktu when it was ambushed by approximately 20 armed men (some of whom have been identified) at the Douekiri crossroads, 25 km from Goundam. The convoy, in particular the unarmoured vehicles carrying the soldiers on leave, came under heavy fire (from AK-47s and rocket-propelled grenades). The soldiers in the armoured vehicles tried to return fire with their heavy weapons but were unable to do so effectively because the weapons jammed. Six (identified) peacekeepers from Burkina Faso were killed by gunfire, and five (identified) others received serious gunshot wounds or burns. After approximately 30 minutes of fighting, the attackers fled.[915] On 5 September 2015, AQIM released an 18-minute video showing the preparation and execution of the attack on the convoy. In the video, a Mauritanian national named Mohamed Ould Mohamed Salem (also known as Talha El-Azawedi), the head of the Saryat katiba, claims responsibility for the attack in the name of AQIM. It is clear from the video that the attack, which was one of the first direct attacks on a MINUSMA convoy in the Timbuktu region, was carefully prepared for and planned and that the katiba had established a regional network of sympathizers and informants.[916]

555. The Commission asked MINUSMA what measures the Malian authorities had taken to investigate and prosecute the attack, but MINUSMA was unable to provide the Commission with any information in that regard.[917]

ii. January 2016 – Two men killed and four wounded by Malian Armed Forces soldiers in Zinzin[918]

556. On the morning of 15 January 2016, Malian Armed Forces soldiers, who regularly escort civilians and humanitarian convoys, were travelling in a convoy on the Goundam-Timbuktu road near the village of Zinzin (Doukouria commune, Goundam cercle), on their way back to Goundam, when they were attacked from the side of the road near the village by approximately 15 unidentified armed men. During the clash, which lasted about half an hour, two Malian Armed Forces soldiers were killed and four others were wounded (two by bullets). The attackers also stole a Malian Armed Forces vehicle with a mounted machine gun. A Malian Armed Forces rapid reaction force was dispatched to the scene from Goundam and arrived around 20 minutes after the ambush was over. With the support of the rapid reaction force, a group of Malian Armed Forces soldiers decided to conduct a sweep operation in the

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[914] Case CEI71.

[915] Confidential documents of MINUSMA; MINUSMA press release, MINUSMA strongly condemns attack against its peacekeepers in Timbuktu region, 2 July 2015.

[916] Strictly confidential videos; Confidential documents of MINUSMA. See also Jeune Afrique, Nord du Mali: six casques bleus tués dans une attaque, 2 July 2015.

[917] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General for Mali and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[918] Case CEI72.

area to look for the attackers. As part of that operation , one group of soldiers went to the village of Zinzin.[919]

557. Testimonies collected by the Commission, which came from interviews and from a thorough investigation conducted at the time of the incident by the Human Rights and Protection Division of MINUSMA, indicate that the Malian Armed Forces soldiers who went to Zinzin opened fire in the village, including on tents. An (identified) young man and an (identified) boy, both Tuaregs, suffered serious gunshot wounds. The boy, who was 17, died before he arrived at Goundam hospital. The man died at the hospital on the evening of 15 January 2016. There is no reason to believe, based on the evidence available to the Commission, that either of them were armed when they were shot or that they posed a threat to the safety of the Malian Armed Forces soldiers.

558. During the same operation, four other (identified) Tuareg men were arrested in Zinzin by the Malian Armed Forces on suspicion of involvement in the attack on the convoy. The four men were subjected to serious violence while in detention. One of them was violently hit in the head with the butt of a rifle a number of times while he was tied up. Another was kicked by a person wearing boots and had his head slashed with a knife. Afterwards, they were taken to the hospital in Goundam for treatment. After spending two nights in Goundam, they were transferred to Timbuktu. On 19 January 2016 they appeared before a judge in Timbuktu and were placed under committal orders on charges of violation of State security, criminal conspiracy, murder, and assault and battery. However, two days later the prosecutor dropped the charges and ordered their release.[920]

559. On 22 January 2016, a delegation from the Malian Armed Forces went to offer its condolences and apologies to the families of the victims of the Zinzin incident. The delegation also gave gifts (of money and food) to the surviving victims and the families of the deceased. According to information received by the Commission, the Malian Armed Forces opened an internal investigation, and the Timbuktu Gendarmerie opened its own investigation. Despite the initiation of investigations by the Malian judicial authorities, the Commission has yet to receive any specific information from them regarding the initiation of any disciplinary and/or judicial proceedings against the Malian Armed Forces soldiers concerned.[921]

560. In conclusion, the Commission has reasonable grounds to believe that Malian Armed Forces soldiers killed an (identified) young man and an (identified) 17-year-old boy from the village of Zinzin and ill-treated four other (identified) persons, all of whom were Tuaregs, during a military operation on 15 January 2016. While the Commission notes the willingness of the Malian Armed Forces to propitiate the victims and mitigate their suffering, it also notes, on the basis of the information in its possession, that no disciplinary or judicial measures have been taken to identify and punish the perpetrators of the abuses.

[919] Confidential document of HRPD, MINUSMA; Confidential mission report of HRPD, MINUSMA; Testimonies Nos. 343 and 529. See also confidential document of MINUSMA.

[920] Confidential document of HRPD, MINUSMA; Confidential mission report of HRPD, MINUSMA; Testimonies Nos. 343 and 529. See also confidential document of MINUSMA.

[921] Confidential document of HRPD, MINUSMA; Confidential mission report of HRPD, MINUSMA; Testimonies Nos. 343 and 529. See also confidential document of MINUSMA.

iii. October 2016 – 17-year-old boy killed by members of GATIA in Kaigourou[922]

561. On the evening of 23 October 2016, three boys (aged 14, 16 and 17) were in a car driving home from Gossi, on the Gossi-Gourma-Rharous road, when members of GATIA temporarily stationed in Kaigourou (Gossi commune, Gourma-Rharous cercle), who were ensuring the security of the road to Gossi, shot at them, killing an (identified) 17-year-old Arab boy.

562. According to an eyewitness, the GATIA members suddenly opened fire after the driver, at their request, stopped the car. According to another witness, the driver stopped but then attempted to flee when the (identified) head of the checkpoint ordered that the boys be shot. When questioned by the Commission, GATIA stated that its members operating the checkpoint suspected the people in the car of belonging to an opposing armed group and ordered them to slow down. They refused to comply, so the GATIA members opened fire.[923]

563. The Commission notes that the Gendarmerie drew up a transport violation notice attesting to the boy's death and that a complaint was filed with the Gossi gendarmerie against the head of the GATIA checkpoint on 25 October 2016. On 27 and 28 October 2016, a delegation from the Plateforme travelled to Gossi to meet with the relatives of the victims and the commune authorities. A document was reportedly signed at the end of the meeting by representatives of the Plateform and the family of the victim who died, in which the responsibility of the Plateforme for the "accidental" death was acknowledged and the family was precluded from seeking recourse against or damages from the Plateforme.[924] The Commission has received no information concerning any criminal proceedings that may have been initiated against the perpetrator of the killing. In view of the above-mentioned arrangement, the Gendarmerie did not open an investigation.[925]

564. In the light of the evidence, the Commission considers that there are reasonable grounds to believe that, on 23 October 2016, men from GATIA opened fire at a checkpoint near Kaigourou, on the Gossi-Gourma-Rharous road, killing a 17-year-old boy. The Commission notes that the Malian authorities have not initiated an investigation into the GATIA members involved in the incident, even though the victim's family filed a complaint.

iv. April 2017 – Sexual violence perpetrated against a 12-year-old girl by two armed men in Alphahou[926]

565. According to credible testimonies corroborated by the Commission, the following events took place in the village of Alphahou (Bintagoungou commune, Goundam cercle) on the night of 16 April 2017. A group of young people from the commune were having a party when two armed individuals burst in and fired shots into the air. The attackers stole the boys' phones and trousers and forced several girls into an empty room near the courtyard where the party was taking place. The attackers then sexually assaulted an (identified) 12-year-old girl. Two other girls were reportedly stripped naked but not sexually assaulted. The attackers fled with the stolen goods.

[922]Case No. CEI73.

[923]Confidential document of MINUSMA; Confidential documents of HPRD, MINUSMA; Testimony No. 510. See also testimony No. 503.

[924]Confidential document of MINUSMA; Confidential document of HRPD, MINUSMA; Testimony No. 510.

[925]Confidential document of MINUSMA; Confidential document of HRPD, MINUSMA; Testimony No. 510.

[926]Case No. CEI74.

566. On 19 April 2017, the head of the CJA base in Mbouna (Goundam cercle), who received a monthly payment from the local authorities in return for ensuring the security of the area, informed the Malian authorities that he had found the suspects and the stolen property. However, he apparently refused to reveal the identities of the suspects or hand them over to the Gendarmerie. According to the information available to the Commission, the Malian judicial authorities have not investigated the incident.[927]

v. 14 August 2017 – Attack on MINUSMA headquarters in Timbuktu[928]

567. At 1.40 p.m. on 14 August 2017, four attackers armed with AK-47s, a PKM machine gun, grenades and an RPG-72 rocket launcher suddenly jumped out of a black pick-up truck in front of MINUSMA headquarters in Timbuktu and fired shots at a soldier from the Burkina Faso battalion of MINUSMA who was stationed outside the main gate of the camp. The Burkina Faso peacekeepers who were on duty in the observation towers at the entrance to the camp then retreated, which enabled the attackers to kill three of the unarmed Malian security guards stationed at the entrance. The attackers then entered the camp, encountering no resistance from peacekeepers, and killed two more security guards who were near the main entrance. The attackers then split up into several groups. One of the attackers fired shots at a Burkina Faso peacekeeper and was then then killed. Two others fired a rocket at the container housing the MINUSMA information and communications technology servers, which resulted in all communications at the base being cut off. They then attempted to fire a rocket towards the restaurant of the Hendrina Khan hotel, where many MINUSMA personnel were having lunch. When that failed, they fired shots towards the restaurant with their AK-47s and launched grenades in its direction. However, they were soon killed by the UNDSS and UNPOL forces guarding the hotel. While that was happening, two other assailants attacked the north-western side of the camp, which is very close to the post of the Malian Gendarmerie. They killed a Malian gendarme and exchanged shots with the peacekeepers guarding the western perimeter of the camp. One of the attackers was killed in the exchange of fire. After several hours of searching for and exchanging fire with the remaining attacker, the Malian Armed Forces managed to locate and kill him. The shooting did not stop until approximately 4 p.m.[929] No one has claimed responsibility for the attack but, given that it was carried out concomitantly with the attack on Douentza and that the modus operandi and weapons used in the two attacks were similar, there is reason to believe that a JNIM group was involved, since JNIM has the necessary structure and sufficient resources to carry out coordinated attacks on this scale.[930]

568. On 9 March 2018, MINUSMA sent a note verbale to the Government of Mali informing it of the many attacks that had been carried out against MINUSMA premises and its civilian and military personnel since 7 August 2016 and requesting that investigations be conducted and that the individuals who carried out and ordered the attacks be prosecuted. In response to the Commission’s inquiries, MINUSMA indicated that it had not received a response from the Malian authorities to date.[931]

[927] Confidential report of HRPD, MINUSMA; Confidential document of HRPD, MINUSMA; medical documents.

[928] Case CEI75.

[929] See also MINUSMA, Le quartier général de la MINUSMA attaqué, 14 August 2017.

[930] Confidential document of MINUSMA.

[931] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

3. Region of Gao and Ménaka cercle (until 2016) / region of Ménaka (from 2016)

569. The situation in the Gao region evolved following the signing of the Peace and Reconciliation Agreement. Previously, there had been a conflict situation in which clashes between armed groups were common. After the signing of the Agreement, the main problem was crime (theft of livestock and vehicles, settling of scores and trafficking of all kinds) resulting from the widespread insecurity caused by a weak State presence. The fact that fewer incidents falling within the Commission's mandate were reported to have taken place during the third period under consideration in this report does not mean that people and property in the region were safe. Most of the attacks documented by the Commission that took place in the Gao region during that period were carried out by extremist armed groups, in particular Al Mourabitoun. MINUSMA was a target, but so were stakeholders in the peace process, as exemplified by the 2017 attack on the Operational Coordination Mechanism (MOC) in Gao.

570. The former Ménaka cercle became a new region of Mali in 2016. The armed groups CMA, GATIA and, from 2016, MSA-D had a particularly significant presence there and competed for control of the area, which resulted in the regular settling of scores. The State continued to have only a symbolic presence. While groups affiliated with Al-Qaida had a presence in northern Ménaka, from 2017 Islamic State in the Greater Sahara made the region the main focus of its operations in Mali. Those groups exacerbated the existing disputes between Daoussahak Tuaregs and Fulanis by attacking, in particular, Imghad and Daoussahak Tuaregs. GATIA and MSA-D were particularly active in Ménaka from 2017, especially in 2018, when they hosted the defence and security forces and the French Barkhane force and participated in operations led by them against extremist armed groups, in particular Islamic State in the Greater Sahara. The Commission's investigations concerning that period revealed that GATIA continued to recruit and utilize children under the age of 18. In addition, MSA-D was accused of committing abuses against civilians in the Ménaka region in a number of incidents that took place in 2017.[932] While those allegations have not been independently verified, the Commission considers that they are sufficiently serious to warrant investigation by the judicial authorities of Mali.

i. Attacks against MINUSMA by Al Mourabitoun in the city of Gao

31 May 2016 – Double attack by Al Mourabitoun against MINUSMA and MINUSMA subcontractors in Gao resulting in the deaths of one peacekeeper and one civilian contractor[933]

[932] The Commission has collected information indicating that MSA-D may have been involved in the following incidents in 2017. (1) On 18 April 2017, a 30-year-old Songhaï merchant was allegedly killed outside his home in Andramboukane by identified armed men who were thought to be members of MSA. (2) On 16 June 2017, at around 8 p.m., a member of MSA allegedly shot in the head and killed a boy from the Arab community as he rode a motorcycle with a Songhaï friend. (3) On 8 July 2017, two Bella Tuareg women were allegedly gang raped by MSA members on duty at a checkpoint in Ménaka. The alleged victims were a 26-year-old married woman and a 17-year-old girl. (4) On 11 July 2017, two Fulanis were allegedly arrested and executed by members of MSA-D during a sweep operation in Anderamboukane (90 km north-east of Ménaka). (5) On 11 July 2017, the MSA-D and GATIA coalition allegedly executed five Fulani civilian cattle herders at the market in Taghalat (60 km south of Menaka). (6) On 11 July 2017, a Fulani civilian was allegedly summarily executed by MSA-D members in Tagalan (15 km north of Infoukaritene) for suspected membership of an extremist armed group. (6) On the afternoon of 14 July 2017, members of MSA-D allegedly summarily executed five Fulani cattle herders just outside Ménaka, near the Madina neighbourhood. (7) On 10 August, a 16-year-old Bella Tuareg boy was allegedly subjected to ill-treatment by members of MSA in the city of Ménaka. Confidential documents of HRPD, MINUSMA.

[933] Case No. CEI76.

571. At approximately 8.50 p.m. on 31 May 2016, a beige four-by-four vehicle approached the main entrance to the MINUSMA camp in the city of Gao, which is in the “water tower” neighbourhood. The vehicle was travelling at normal speed, but none of its lights were on. When it was near the entrance, the driver suddenly sped up and turned towards the gate of the camp, which was protected by HESCO blast walls and guarded by peacekeepers from the Chinese battalion of MINUSMA. A few seconds later the vehicle overturned and exploded, killing one Chinese peacekeeper stationed in front of the entrance and injuring seven others (all of whom have been identified). Eight (identified) civilian personnel of MINUSMA who were in the vicinity of the explosion received minor injuries.

572. At the same time, in another part of the city, the residence of the staff of a MINUSMA subcontractor was attacked. A grenade made from an 82 mm mortar shell was thrown at the door, and the guards protecting the site were shot at with automatic weapons (AK-47s). An (identified) staff member of the subcontractor was killed in the attack, and two (identified) local security guards were seriously injured.[934]

573. On 1 June 2016, Al Mourabitoun claimed responsibility for the attack on behalf of AQIM, naming four individuals whom it affirmed had carried out the attacks. In the available photos, the driver of the vehicle used in the suicide attack appears to be a boy of about 16.[935]

574. The Commission asked MINUSMA what measures it had taken to follow up on the investigation into and prosecution of the perpetrators of the attack by the Malian authorities, but the Mission was unable to provide the Commission with any information.[936]

29 November 2016: Attack on Gao Airport, attributable to Al Mourabitoun, which was carried out using two vehicles disguised as United Nations vehicles and which resulted in the death of an Operation Barkhane *contractor*[937]

575. At around 6 p.m. on 29 November 2016, four people travelling in two vehicles that were disguised as United Nations vehicles and carrying explosive devices managed to drive past the Malian Armed Forces soldiers stationed approximately 1 km from the airport in the city of Gao without arousing suspicion. They then proceeded to drive towards the entrance to the airport. Once they were inside the perimeter of the airport, an individual got out of one of the vehicles and fired shots at the camp of the French *Operation Barkhane* force, injuring two (identified) Malian contractors, one of whom died of his wounds.

576. *Operation Barkhane* soldiers immediately returned fire and seriously injured the attacker, who was then apprehended. Meanwhile, the driver of one of the vehicles managed to drive it into the airport area by breaking through the aluminium gate at the entrance. He drove approximately 130 metres into

[934] Confidential documents of MINUSMA. See also MINUSMA, Attaques sur le camp de la MINUSMA et le local d’un prestataire de service de UNMAS à Gao, 31 May 2016.

[935] Confidential documents of MINUSMA.

[936] Internal memorandum dated 31 October 2019 from the Commission of Inquiry addressed to the Special Representative of the Secretary-General for Mali and Head of MINUSMA, Mahamat Saleh Annadif, concerning judicial follow-up to attacks against MINUSMA; Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry concerning judicial follow-up to attacks against MINUSMA.

[937] Case No. CEI77.

the area before the explosive device in the vehicle detonated, destroying MINUSMA offices and causing serious damage to eight MINUSMA aircraft and the United Nations terminal.

577. The driver of the second vehicle first attempted to run over the security guard at the entrance to the airport. He then drove for several minutes on the tarmac and finished by crashing the vehicle into the tail of a MINUSMA MI-8 helicopter that was parked on the tarmac. He did not manage to detonate the explosive device.[938]

578. That evening, Al Mourabitoun claimed responsibility for the attack on AQIM social media pages.[939] Al Mourabitoun gave the identities of four individuals whom it claimed had participated in the attack. At least three of them were from the city or region of Gao.

579. On 9 March 2018, MINUSMA sent a note verbale to the Government of Mali informing it of the many attacks that had been carried out against MINUSMA premises and its civilian and military personnel since 7 August 2016 and requesting that investigations be conducted and that the individuals who carried out and ordered the attacks be prosecuted. MINUSMA indicated that it has not received a response from the Malian authorities to date.[940]

ii. 18 January 2017 – Suicide bombing at the MOC camp in Gao attributable to Al Mourabitoun[941]

580. The MOC camp housed fighters from armed groups belonging to CMA and the Plateforme, which were both signatories to the Peace and Reconciliation Agreement, and soldiers of the Malian Armed Forces, who together would form the mixed patrols provided for in the Agreement.[942]

581. According to a detailed report by the United Nations Police component of MINUSMA, the findings of which were corroborated by, inter alia, witnesses interviewed by the Commission, at around 8.45 a.m. on 18 January 2017 an individual, who was wearing a turban and driving a vehicle that looked similar to the vehicles used by MOC but was carrying an explosive device, used the vehicle to break down the gate of the MOC site. He also ran over the man who was responsible for checking the identity of individuals entering the camp that morning. He drove the vehicle towards the flagpole, but the MOC fighters had already left that area. He then turned towards a company (comprising approximately 120 individuals) that was receiving military training not far from the flagpole. When he got close to them, he detonated the explosive device.[943]

582. According to information recorded by UNPOL at the time, 54 people died (11 Malian Armed Forces soldiers, 17 members of the Plateforme and 26 members of CMA) and 127 were injured (29

[938] Confidential document of MINUSMA; See also, MINUSMA press release, Attack against MINUSMA this morning in Kidal, 28 November 2015.

[939] Jeune Afrique, Mali: le groupe de Belmokhtar revendique la tentative d'attentat suicide contre l'aéroport de Gao 29 November 2016; Le Parisien, Mali: l'attentat contre l'aéroport de Gao revendiqué par le groupe de Belmokhtar, 30 November 2016.

[940] Response dated 17 January 2020 from the Special Representative of the Secretary-General for Mali and Head of MINUSMA addressed to the Commission of Inquiry, concerning judicial follow-up to attacks against MINUSMA.

[941] Case No. CEI78.

[942] Testimony No. 237.

[943] Testimonies Nos. 237 and 379; Confidential report of UNPOL; See also, Le Monde, Mali: 77 morts dans un attentat à Gao, 19 January 2017.

Malian Armed Forces soldiers, 42 members of the Plateforme and 54 members of CMA). The explosion also caused material damage and left gaps in the perimeter fence.[944] Al Mourabitoun claimed responsibility for the attack, claiming that it needed to punish groups cooperating with France.[945]

583. In conclusion, the Commission considers that there are reasonable grounds to believe that the armed group Al Mourabitoun carried out a suicide bombing at the MOC camp in Gao on 18 January 2017, killing 54 people and wounding 127 others. The Commission notes that the National Gendarmerie in Gao initiated a judicial investigation following the attack.[946] The Commission asked the Malian authorities whether judicial measures had been taken in relation to the case, but no response had been received as at the date of submission of this report.[947]

iii. 12 July 2016 – Three civilians killed and several wounded by gunfire during a demonstration in Gao[948]

584. On the basis of interviews conducted by the Commission with direct witnesses, photographs and videos collected and, in particular, the extensive and detailed investigation conducted in Gao by the Human Rights and Protection Division of MINUSMA from 15 to 22 July 2016 (which included interviews with 34 witnesses), the Commission established the following facts.[949]

585. A march was planned by civil resistance movements, civil society organizations in Gao and the international collective of the diaspora of people from the northern regions of Mali. On 4 July 2016, an application for permission to hold a march from the Tomb of Askia to the Governor’s Office sometime between 12 and 15 July 2016 was submitted to the competent authorities in Gao. The reasons for the demonstration were the high cost of living, insecurity, and “the interim authorities and the non-involvement of civil resistance movements in the cantonment and reintegration process”.[950]

586. On 9 July 2016, the organizers were informed in writing by the authorities of the urban commune of Gao that their application had been rejected for security reasons. That decision was confirmed by the Governor on 11 July 2016. On the evening of 11 July 2016, the police went to the headquarters of the youth movement (one of the groups organizing the demonstration) to look for weapons. While they were there, they arrested 2 people guarding the headquarters (both of whom were armed and belonged to Ganda Izo) and 19 other individuals who were at the location.[951]

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[944] Confidential report of UNPOL; Documents from a medical source.

[945] Confidential report of UNPOL; Report of the Secretary-General on the situation in Mali (S/2017/271) 30 March 2017, para. 11; France 24, Mali - Étrange revendication et rapport complexe entre Al-Mourabitoune et AQMI, 19 January 2017; Studio Tamani, Attaque de Gao: Vague de condamnations et de soutiens au Mali, 19 January 2017.

[946] Confidential report of UNPOL.

[947] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

[948] Case No. CEI79.

[949] Testimonies Nos. 370 and 226; Confidential investigation report of HRPD, MINUSMA. See also France24, Mali: l’armée ouvre le feu sur une manifestation de jeunes à Gao, 12 July 2016 (00:00-01:13).

[950] Civil resistance movements of Gao, application for permission to hold a peaceful march, 8 July 2016.

[951] Testimonies Nos. 370 and 226; Confidential investigation report of HRPD, MINUSMA.

587. The march began as planned, despite the lack of authorization, on the morning of 12 July 2016 at the Tomb of Askia. A few hundred people, including women and children, took part. Some of the demonstrators were carrying sticks. When the march arrived at the roundabout known as “rond-point des martyres”, the defence and security forces, who were blocking the road with a small number of personnel compared with the size of the crowd, set off tear gas grenades. Some of the demonstrators responded with stones and sticks, and others set tyres on fire. The demonstrators continued to make their way towards the Governor’s Office but clashed with the defence and security forces near the police station. Finding themselves unable to control the crowd, the police resorted to using firearms, shooting at the protesters with live ammunition.[952]

588. According to testimonies gathered by the Commission and confirmed by several sources, the bullets fired by the defence and security forces caused the deaths of three (identified) individuals: a 19-year-old man who was shot in the head near the Algerian consulate while trying to flee from the police, a 46-year-old man who was not participating in the march and was injured near his shop, and a 22-year-old man who was killed in the Place de l’Indépendance.[953]

589. According to the investigation by the Human Rights and Protection Division of MINUSMA, 31 (identified) people, including 7 children, received gunshot wounds during the incident.[954] Some had wounds to the upper body. Others were injured while trying to run away. Still others (including a 10-year-old boy sitting in a vehicle parked at a car repair shop) were injured even though they were not participating in the march. Eyewitnesses described the defence and security forces personnel who shot the victims as wearing police uniforms or as being in a white police car.[955] The Commission notes that two police officers and two members of the National Guard were injured by stones and sticks.[956]

590. On 13 July 2016, a delegation comprising four government ministers, six members of the National Assembly of Mali and other Malian political and administrative figures travelled to Gao in an attempt to calm the situation. The delegation met with representatives of the march organizers, and a joint communiqué was drawn up. Twenty people arrested on 11 and 12 July 2016 were released and calm was restored in Gao.[957]

591. The Commission notes that, according to the joint communiqué and other sources, the Minister of Justice and Human Rights and Keeper of the Seals stated that “the Public Prosecutor of Gao has been given clear and precise instructions about putting together a case with a view to the opening of a judicial inquiry.” The Public Prosecutor of the Gao regional court instructed the Gendarmerie brigade in Gao to conduct the preliminary investigation.[958] A witness told the Commission that the Gao Lama association filed a complaint in Bamako but that it was dismissed for “administrative reasons”.[959]

[952] Testimonies Nos. 370 and 226; Confidential investigation report of HRPD, MINUSMA. Voir aussi, France 24, Mali: l’armée ouvre le feu sur une manifestation de jeunes à Gao, 12 juillet 2016 (00:00-01:13).

[953] Testimony No. 226; Confidential report of HRPD, MINUSMA. See also testimony No. 370.

[954] Testimonies Nos. 370 and 226; Confidential report of HRPD, MINUSMA; Document from a medical source. See also France24, Mali: l’armée ouvre le feu sur une manifestation de jeunes à Gao, 12 July 2016 (00:00-01:13).

[955] Testimony No. 226; Confidential report of HRPD, MINUSMA; Medical document.

[956] Confidential document of HRPD, MINUSMA; Testimony No. 226.

[957] Testimony No. 226; Confidential report of HRPD, MINUSMA.

[958] Testimony No. 226; Confidential report of HRPD, MINUSMA.

[959] Testimony No. 226.

According to media sources, the State gave the families of the deceased and injured 2 million CFA francs per victim.[960]

592. In conclusion, the Commission considers that there are reasonable grounds to believe that, during an unauthorized demonstration on 12 July 2016, the defence and security forces, in particular members of the National Police, fired on the demonstrators, thereby causing the deaths of 3 people and injuring 31 others. Four members of the defence and security forces were also injured. Taking into account the circumstances and the information reviewed by the Commission, the Commission finds that there are reasonable grounds to believe that, in at least a significant number of the documented cases, the use of potentially lethal force was not justified. The Commission asked the Malian authorities whether judicial measures had been taken in relation to the case, but no response had been received as at the date of submission of this report.[961]

iv. 2015-2017 – Recruitment and use of children by the armed group (GATIA) [962]

593. Since 2015 and at least until the end of 2017, the presence of children between 15 and 18 years of age, girls and boys, within the ranks of the armed group GATIA has been repeatedly reported in the region of Gao and in Ménaka cercle (which became a region in 2016). According to the MINUSMA Child Protection Section, GATIA was responsible for at least 20 cases of child recruitment in 2014-2015, including 13 cases in 2015. Those figures reflect only the cases verified by MINUSMA and the number of cases continued to increase in 2016.[963] Of all the information received concerning GATIA for the period between 2015 and the end of 2017,[964] the Commission noted in particular the recruitment of children at the GATIA camp in Ineka, located approximately 8 km from Ménaka, where the group settled in May-June 2015 after having dislodged CMA groups from the city of Ménaka.

594. By October 2015, the Human Rights Division of MINUSMA on mission to the locality had already observed the presence among GATIA members of at least five young people clearly under 18 years of age who were wearing military fatigues and carrying weapons. The Division therefore carried out a mission to the GATIA camp in Inekar in March 2016. The Commission was able to verify the methodology of the mission, which it considers to be reliable. Following interviews with the children present on the day of the mission, it was confirmed that 27 children from the Bella Tuareg community, including 14 girls, claimed to be members of GATIA. The children, half of whom were 15 years old, were between 12 and 17 years of age. Their ages were determined during interviews with MINUSMA staff and with community leaders. The investigation team was informed, but was unable to verify, that there were 74 children within the ranks of GATIA at the Inekar camp. The boys said that their activities within GATIA consisted of acting as day care workers at the camp and participating in cooking tasks

[960] Maliweb.net, Crise au Mali: La cité des Askia rend hommage aux martyrs, 13 July 2017.

[961] Note verbale of 6 December 2019 addressed to the Attorney General of Bamako and note verbale of 12 March 2020 addressed to the Ministry of Justice.

[962] Case No. CEI80.

[963] Data from the MINUSMA Child Protection Section; Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018.

[964] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018; Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017), February 2018; Confidential document of HRPD, MINUSMA (in May 2015, HRPD of MINUSMA interviewed a 16-year-old boy belonging to GATIA who confirmed that he had been arrested in Tin Fadimata in the region of Gao by members of CMA while he was taking part in hostilities); Testimonies Nos. 540, 541 and 424.

for the younger ones. The slightly older boys did night patrols in vehicles around Inekar. They all claimed to have been trained to handle AK-47s. The young girls were assigned to kitchen tasks and to serving food for the fighters.

595. The children associated with GATIA at the camp in Inekar had joined with the consent of their parents. According to the information available, the parents had no objection to the recruitment of their children and some had encouraged them on the grounds that they would rather know that their children were in a group camped around the village than recruited into an extremist armed group. In addition, the parents believed that their children could benefit from the DDR programme under the Peace and Reconciliation Agreement.[965]

596. The hope of being able to benefit from the DDR programme therefore seems to have driven some children to join such groups as GATIA in particular. That appears to be confirmed by the findings of a mission, led by HRPD of MINUSMA in December 2016, to verify the age of fighters in the context of the pre-cantonment of Plateforme and CMA fighters for the Operational Coordination Mechanism in Gao. During the verification mission, HRPD noted the presence within the ranks of GATIA of five (identified) children 16 or 17 years old who said that they had been recruited between 2013 and 2015. Furthermore, most of the adult fighters indicated that they had been recruited when they were under 18 years of age.[966]

597. The Commission therefore considers that there are reasonable grounds to believe that GATIA recruited many children at the Inekar camp in 2015-2016, of whom at least 27 (identified) children were between 12 and 17 years old, including 14 girls. The boys at the camp received military training, weapons training and participated in group patrols. That practice had not ceased in 2017 as the presence of children within the ranks of GATIA was still reported, and even boasted about, by a GATIA military leader in September 2017.[967] The Plateforme, of which GATIA is a member, was listed in the annexes to the 2017 report of the Secretary-General on children and armed conflict as a party to conflict that was engaged in the recruitment and use of children.[968] Although some GATIA commanders on the ground acknowledged the recruitment of children, including at the camp in Inekar, the GATIA representatives heard by the Commission reiterated the GATIA official position that it did not recruit or use children. The GATIA representatives maintained that United Nations reports of child recruitment in the ranks of GATIA were based on unfounded information.[969]

[965] Confidential investigation report of HRPD, MINUSMA; Confidential internal document of MINUSMA. See also report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 26 and 27.

[966] In total, the Mission noted the presence of eight children during its pre-cantonment verifications: in addition to the five from GATIA, one (identified) child 16 or 17 years old belonged to MAA-Plateform and two (unidentified) children belonged to CMA. Confidential reports of HRPD, MINUSMA. See also report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017), February 2018, para. 73; Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 26 and 27.

[967] Confidential document of HRPD, MINUSMA.

[968] Report of the Secretary-General on children and armed conflict (S/2018/465), 16 May 2018.

[969] Testimony No. 503.

4. *Region of Mopti*

598. The crisis in Mali gradually shifted to the regions of Ségou and Mopti from 2015. The absence of the Malian State, porous borders, easy access to military weapons and the expansion of extremist armed groups led to increased pillaging and racketeering, particularly targeting the livestock and property of the local population, and violence increased. The security situation in the regions of Mopti and Ségou has deteriorated steadily since 2015, placing the central part of Mali at the heart of the crisis.

599. Routed by Malian and French forces in 2013, extremist armed groups were reconstituted and redeployed from 2015 in the forested areas of central Mali, in the flooded areas of the Niger Delta and on the border with Burkina Faso. The most active extremist armed groups in the region of Mopti are the Macina katiba and the Gourma katiba of Ansar Eddine and, from 2016 and 2017, the Burkina Faso group of Ansar al-Islam and Islamic State in the Greater Sahara. Those groups seem to be making control of the area a strategic objective. They recruited widely in the region, in particular targeting young people in the Fulani community, and took advantage of the community's long-standing frustrations as well as the reputation and networks of the head of the Macina katiba, Amadou Koufa, a well-known preacher from the area. Members of extremist armed groups or their associates target local authorities who are perceived to support the Malian State or Malian and foreign armed forces. They impose their interpretation of religion on the population, attacking those men and women who do not conform to it. They attack the "foreign presence" in the region, including civilians and soldiers working for MINUSMA. They also interfere with or promote conflicts between communities, mainly alongside the Fulani, causing cycles of violence between the Fulani and Dogon communities in the region.

600. In response to the expansion of extremist armed groups in the region of Mopti, the defence and security forces have conducted numerous operations in the area since 2015. The Commission documented several cases of abuse against inhabitants in the region of Mopti, mostly Fulani, committed as part of, or on the margins of, those "counter-terrorist" operations.

i. October 2015 to December 2017 - Targeted executions of authorities and influential figures in the region of Mopti attributed to extremist armed groups[970]

601. Since 2015, a significant number of local authorities and influential figures of Fulani or Dogon origin have been targeted for execution in the region of Mopti following the same modus operandi.[971] The Commission chose to document six targeted executions between October 2015 and December 2017 to illustrate their recurrent nature in several cercles of the region of Mopti (particularly in the cercles of Koro and Douentza). The Commission notes that targeted executions continued in the region of Mopti after 19 January 2018, the end date of its mandate.[972]

602. The Commission has reasonable grounds to believe that, on 9 October 2015, eight men dressed in black and carrying automatic weapons (but not otherwise identified) went to the home of the (identified) deputy mayor of the village of Douna Pen in Diougani commune, Koro cercle, where they

[970] Case No. CEI81.

[971] FIDH-AMDH, Dans le centre du Mali, les populations pris au piège du terrorisme et du contreterrorisme, November 2018, pp. 8 and 38-40.

[972] FIDH-AMDH, Dans le centre du Mali, les populations pris au piège du terrorisme et du contreterrorisme, November 2018, pp. 8 and 38-40; HRW, "We used to be brothers". Self-defence group abuses in central Mali, 7 December 2018, p. 17; HRW, "How much more blood must be spilled", Atrocities against civilians in central Mali, 2019, February 2020, pp. 66-68.

asked him in the Fulfulde language who the mayor of the village was. When the unarmed deputy mayor went outside of his home to talk to the attackers, they ask him to follow them into the bush. He refused to do so and was executed on the spot by several bullets in front of his wife and children. According to a witness interviewed by the Commission, the attackers were heavily armed Fulani men from the village of Ngawodie who were opposed to the presence of government officials in the region. Information on the identity of the attackers was not corroborated by any other source. Although the gendarmerie had visited the scene and questioned those present, the family never received any news of the investigation or possible legal proceedings, which shows that no legal proceedings were instituted.[973]

603. During the night of 3 to 4 April 2016, at around 10.45 p.m., an (identified) Fulani shopkeeper from the city of Douentza was murdered by two individuals on motorcycles who machine-gunned his shop. The (identified) deputy of the Douentza constituency in the National Assembly and another (identified) friend of the victim were also inside the shop. The murder went unclaimed but the modus operandi and circumstances of the attack, which also coincided with a government visit to the region, indicate that extremist armed groups in the region were responsible.[974]

604. On 18 January 2017 at approximately 6.40 p.m., unidentified armed individuals shot the (identified) newly re-elected Fulani mayor of the commune of Hairé (Douentza cercle) as he was leaving the mosque in the village of Boni, the administrative seat of the commune. Seriously injured and urgently evacuated to the Douentza reference health centre, the mayor died from his injuries despite the treatment provided.[975]

605. On 28 January 2017 at approximately 7.40 p.m. in the locality of Douentza (Douentza cercle), two (unidentified) armed individuals executed the (identified) Dogon mayor of the commune of Mondoro (Douentza cercle), located on the border with Burkina Faso. The victim was returning from the mosque not far from his residence after 7 p.m. prayers when the attackers shot him and then fled.[976] An investigation was opened by the local gendarmerie unit and an (identified) suspect domiciled in Douentza was arrested the day after the incident but, to the best of the Commission’s knowledge, no proceedings were instituted.[977]

606. On 30 January 2017 at approximately 5 p.m., an (identified) Dogon farmer and trader who was a councillor in the village of Kambô (Dinangourou commune, Koro circle) was executed at point-blank range by eight (unidentified) armed men who arrived on four motorcycles and spoke Fulfulde. Before fleeing, the attackers set fire to the new tractor that the victim had just bought with a government grant.[978]

[973] Testimony No. 447. See also Bamada.net, Assassinat de Timothé Kodio Adj Maire de Dioungani: les mains souillées des autorités, 25 October 2015.

[974] Confidential report, UNPOL. See also L’enquêteur, Assassinat d’Issa Cissé dit Issi à Douentza: le député Ilias Goro était-il la vraie cible? 18 April 2016.

[975] Confidential report, UNPOL. See also, L'Indicateur du Renouveau, Boni: l'assassinat louche du maire, 25 January 2017.

[976] Confidential report, UNPOL. See also, Malijet, Douentza: le maire de Mondoro assassiné, 28 January 2017; Delta News, Témoignage: Qui était Souleymane Ongoïba, maire de la commune Rurale de Mondoro, Cercle de Douentza? 15 February 2017.

[977] Confidential report, UNPOL.

[978] Testimony No. 451. See also Malijet, Cercle de Koro: le 1er conseiller du village de Kambô assassiné par des bandits, 31 January 2017.

607. On Sunday 3 December 2017, the (identified) Dogon Secretary-General of the Dioungani commune mayor's office in Koro cercle was at home when, at approximately 5 p.m., four men carrying automatic weapons and wearing turbans arrived in front of the house on motorcycles, entered it and shot him several times, killing him, and then fled. According to the information provided to the Commission by a local authority, which could not be corroborated, the perpetrators of the assassination were Fulani from the village of Gourty who could not tolerate the presence in the area of persons collaborating with the Government.[979]

608. According to the information collected by the Commission, the execution of persons working or perceived to be working with the Malian Government, the Malian army or foreign forces has been a widespread practice in the region of Mopti since 2015.[980] Faced with the increase in executions, the local authorities largely fled to larger urban centres in the region of Mopti or to Bamako.

609. No armed group claimed responsibility for the above-mentioned executions. However, in view of the geographical areas of the crimes (cercles of Douentza and Koro in which the extremist groups operated); the modus operandi (targeted killings by armed men on motorcycles); the perpetrators' attire (short trousers, black clothes); the military weapons used; the language spoken by the perpetrators (mainly Fulfulde, the language of the Fulani, who constitute a significant part of the recruits of the extremist armed groups in the region); and the victims (mainly elected representatives or local figures, village chiefs and State representatives), there is reason to believe that extremist armed groups (in particular of Macina katiba, Ansar-al Islam or Islamic State in the Greater Sahara, which are particularly active in the region of Mopti) are responsible for those executions, their main motive being to eliminate persons occupying key positions in the area who represent or collaborate with the Malian State.

610. The Commission does not rule out the possibility that some of those executions may have been motivated by the more personal objectives of the perpetrators (banditry, greed and personal revenge), as the perpetrators took advantage of the unstable security situation in the region and widespread impunity to commit those acts. Nevertheless, there are reasonable grounds to believe that armed extremist groups in the region of Mopti (in particular the Macina katiba, the Gourma katiba, Ansar al-Islam or Islamic State in the Greater Sahara) are responsible for the targeted executions of civilians cooperating, or suspected of cooperating, with the Malian authorities or international forces.

611. The Commission notes the extreme difficulty, given the context, of investigating those facts. It notes, however, that the lack of investigations, or progress in investigating the targeted executions, leaves doubts and rumours about the identity of the alleged perpetrators, some of whom blame the Fulani in neighbouring villages, thus contributing to increased mistrust and tensions between the different communities[981] For example, one witness explained to the Commission how, after the execution in the village of Gourty, the Dogon villagers had organized themselves to defend their villages, and that attacks had increased after the execution in Gourty.[982]

[979]Testimony No. 452. See also La lettre du Mali, Insécurité dans le cercle de Koro: un élu assassiné chez lui à Gourty, 14 December 2017.

[980]Testimonies Nos. 451 and 452.

[981]Testimonies Nos. 447 and 452.

[982]Testimony No. 452.

ii. 2015- Abuses committed by Islamist groups against the civilian population, especially women[983]

612. The Commission collected information concerning certain cases of rape and murder committed in the region of Mopti in 2015 by unidentified armed men who may belong to extremist armed groups or that may have been the result of acts of banditry, given the extremely precarious security context in the region of Mopti.[984] The Commission recalls the extreme difficulty of documenting and quantifying those crimes, particularly sexual crimes, often because of the lack of witnesses to the events other than the victims themselves, who generally refuse to testify for fear of being stigmatized.

613. Having examined the methodology followed, the Commission considers that the testimonies collected by Human Rights Watch are credible, namely, that on 6 August 2015, four women were raped on a farm between Bandiagara and Sévaré by five armed men who were wearing the traditional clothing of fighters of extremist armed groups and who allegedly forced the women to pray after being raped.[985]

614. On the basis of the direct testimonies collected, the Commission also has reasonable grounds to believe that, at the end of 2015, in the village of Boulikessi (Douentza cercle), an (identified) Fulani cattle breeder was stopped by nine (unidentified) armed men riding on three motorcycles on his way back from the market. They asked him to reduce the length of his trousers to “conform to Islam”. A few days later, the man was again stopped by the same men who accused him of not following their recommendations regarding the length of his trousers but let him go home. Later, two of the men, armed and “light-skinned”, with beards and speaking Fulfulde, rode out in the middle of the night on their motorcycles and killed the farmer, also stealing his money. The two armed men then pointed a gun at his wife, threatening to kill her. One of the men raped her. The second one did not when he saw that she was bleeding.[986]

615. While in both cases the perpetrators have not been formally identified, their clothing, weapons and the particular circumstances of the events (for example, their attachment to dress requirements or to having their victims pray) make it possible to conclude, to the required standard, that they belong to the extremist armed groups in the region.

iii. 18 July 2015 - Execution of six Dogons by armed Fulani in the village of Niangassagou, Mondoro commune[987]

[983] Case No. CEI82.

[984] In addition to the cases mentioned below, the Commission received an allegation that a 21-year-old woman in the village of Dialloubé (Mopti cercle) was raped on 29 July 2017 by members of an extremist armed group occupying the village for failing to observe the 6 p.m. curfew they had imposed. The Commission focused its investigations on extremist armed groups, but notes that it also received allegations of rape by a member of the Malian Armed Forces (the alleged rape of two girls aged 15 and 16 years by a member of the Malian Armed Forces in Mopti in February 2017) and by a member of an armed group signatory to the Peace and Reconciliation Agreement (the alleged rape of three girls aged 13 to 16 years by a member of CMFRPR-2 in Sévaré on 25 November 2017). Confidential reports, UNPOL; Confidential document of HRPD, MINUSMA.

[985] HRW press release, Mali: abuses spread south, 19 February 2016; Interview with source No. 79.

[986] Testimony No. 262.

[987] Case No. CEI83.

616. In the commune of Mondoro, located on the border with Burkina Faso in Douentza cercle, there is a long-standing tradition between local farmers, mainly from the Dogon community and nomadic herders largely from the Funlani community, that after each harvest, the nomadic herders take their cattle to fertilize the fields before leaving again at the start of the wintering season.

617. On 7 July 2015, in a farming hamlet in the village of Niangassagou, two Dogon crop farmers came to ask Fulani herders from the Niger to leave the fields in order to allow them to farm. When they refused to leave, a dispute broke out between the crop farmers and the herders. One of the Fulani herders pulled out a gun and shot at the two crop farmers but missed his target and instead killed a camel belonging to him. Thanks to the mediation of an older herder, the Fulani herders eventually withdrew from the fields.[988]

618. Ten days later, on 18 July 2015, the day of Eid al-Fitr which marks the end of Ramadan, seven (unidentified) individuals described by witnesses as Fulani from the Niger with weapons “similar to those of the military” and wearing turbans, arrived on four motorcycles in Kobou, a predominantly Fulani village where a minority of Dogon live, near the hamlet where the incident of 7 July had occurred. The seven armed men surrounded the part of the village where the businesses run by Dogon villagers were located. After threatening those present with their weapons, they pointed to an (identified) Dogon and shot him in the leg and head, killing him, then pillaged his business. The attackers then fired two bullets at another (identified) Dogon shopkeeper who died instantly. The businesses of the Dogons were plundered by the attackers.[989]

619. The attackers then headed for the farming hamlet of Niangassagou where the incident of 7 July 2015 had occurred. On their way, they passed an (identified) Dogon crop farmer and shot at him. He was hit by a bullet in the jaw, causing him to collapse. An (identified) Dogon crop farmer trying to escape was caught by the attackers and shot nine times, killing him. When the attackers return to finish off the first farmer, his wife, lying on her husband, begged them to spare him. The attackers departed, leaving the man with a severely injured jaw. He was treated in Burkina Faso and survived.[990] The attackers then reached the hamlet of those involved in the altercation of 7 July 2015. There they shot three (identified) Dogon crop farmers who were brothers. The oldest was shot in the head and his two brothers, who were trying to escape, were shot several times by automatic weapons. According to family members present, the attackers spoke Fulfide and said that they had come to settle scores with the brothers.[991]

620. The National Guard of the Mondoro commune and a patrol of the Malian Armed Forces present in the locality of Boulikessi were informed of the incident and the bodies of the victims were kept until the following day for observation. At 9 a.m., the defence and security forces having not yet arrived on the scene, the chief of the village of Niangassagou gave the order to bury the victims. Soldiers of the

[988] Testimony No. 259, 456 and 253. See also Delta News, Insécurité au Nord du Mali: lumière sur les tueries de Mondoro dans le cercle de Douentza, 22 August 2015.

[989] Testimonies Nos. 456, 253 and 259; Confidential document of HRPD, MINUSMA; Confidential document of witness No. 259. See also HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012-2017, 2017, pp. 39 and 40; Delta News, Insécurité au Nord du Mali: lumière sur les tueries de Mondoro dans le cercle de Douentza, 22 August 2015.

[990] Testimonies Nos. 259, 253 and 258; Confidential document of HRPD, MINUSMA. See also Jeune Afrique, Mali: six morts dans des violences entre Peuls et Dogons, 20 July 2015.

[991] Testimonies Nos. 259, 258 and 253.

Malian Armed Forces eventually arrived in Kobou, but the Mondoro National Guard reportedly was not deployed because they had no money to refuel.[992]

621. In conclusion, there are reasonable grounds to believe that on 18 July 2015, six (identified) Dogon men were shot dead and one (identified) Dogon man was seriously injured by seven (unidentified) attackers, described as Fulani from the Niger, in the village of Kobou and in two farming hamlets in the village of Niangassagou. In view of the weapons used and the modus operandi and clothing of the attackers, they may belong to or have links with the extremist armed groups present in the area.

622. That was the first case in the commune of Mondoro where clashes between the Fulani and Dogon communities resulted in death. According to testimonies collected by the Commission, after the incident the village chief of Niangassagou succeeded in dissuading members of the Dogon community in the cercles of Koro and Douentza from launching a punitive expedition against the Fulani inhabitants of the surrounding area, trusting that the Malian authorities would bring them justice.[993] Although several members of the Malian administration and army were informed of the incident at the time of the events, the Commission's investigations show that no judicial proceedings were initiated in respect of the murders. While the Commission takes note of the difficulty in identifying the perpetrators of those crimes, the lack of an investigation that could have clarified responsibilities undoubtedly contributed to the deterioration of relations between the Fulani and Dogon communities in the commune of Mondoro. Indeed, the incident had a profound effect on the Dogon community of the commune. It was also one of the triggers for the serious security problems that have existed between the Fulani and Dogon in the commune of Mondoro since then and which have worsened considerably since 2018, leading to the creation of Dogon self-defence groups in the villages, serious cases of malnutrition and numerous violent incidents between the two communities that have resulted in the deaths of many Fulani and Dogon civilians.[994]

623. Disputes between cattle breeders and crop farmers had occurred regularly in the past and were traditionally settled peacefully by the community or through the intervention of the local authorities. Several witnesses, however, explained to the Commission that since the 2012 crisis and the absence of the State, it had become difficult to resolve land issues peacefully.[995] The situation also worsened with the arrival of armed groups in the region, making it increasingly easy to use firearms to settle disputes.

iv. 7 August 2015 - Attack on the Byblos Hotel in Sévaré attributable to Al-Mourabitoun[996]

[992] Testimonies Nos. 259 and 456. See also Delta News, Insécurité au Nord du Mali: lumière sur les tueries de Mondoro dans le cercle de Douentza, 22 August 2015.

[993] Testimony No. 259; Confidential document of witness No. 259; Confidential document of HRPD, MINUSMA.

[994] Testimonies Nos. 207, 258 and 253; Confidential document containing the list of Dogon victims in the commune of Mondoro since 2015; Testimony No. 234; Mopti Regional Health Directorate, report of fact-finding mission into unusual disease occurrence in health-care areas of Douna, Niagassadiou and Tiguila in the commune of Mondoro, Douentza cercle, 5 August 2018.

[995] On 12 August 2015, a delegation comprising relatives of the victims and local authorities met with the Minister of Security to explain the security situation in the area and to request more patrols of the army and the National Guard in the area. According to the delegation, that request was not successful. Testimony No. 456. See also Delta News, Insécurité au Nord du Mali: lumière sur les tueries de Mondoro dans le cercle de Douentza, 22 August 2015.

[996] Case No. CEI84.

624. On 7 August 2015, at approximately 7 a.m., several heavily armed (unidentified) individuals attacked the Byblos Hotel (Sévaré, Mopti cercle), which was rented by the air transport company Utair South Africa, a MINUSMA-contracted company, to house its staff.[997] As four (identified) company staff members boarded the minibus that was to take them to the airport where their helicopter was parked, the attackers, armed with AK-47s, jumped out of a vehicle and machine-gunned the minibus and then set it on fire, killing two company employees, one (identified) Nepalese and one (identified) Ukrainian. In the panic, the Malian driver of the minibus, who was shot in the arms, managed to take refuge in a nearby house while the two other survivors of the attack returned to hide in the hotel.[998] The attackers quickly entered the hotel, machine-gunning the doors of the rooms in search of the two survivors of the attack on the minibus and others who had locked themselves in the rooms when they heard the shots and screams.[999]. The defence and security forces were quickly alerted and deployed to the scene. Clashes then broke out between the soldiers and the attackers, during which four (identified) Malian soldiers and an attacker wearing an explosive belt that he had not managed to activate were killed. During the fighting, the attackers continued their systematic search of the rooms for the company's employees and, in the late afternoon, executed at close range two other men, an (identified) Ukrainian and an (identified) South African, who were found in their rooms. Despite their meticulous search, the attackers were unable to find the four individuals still hiding in the hotel. They then attempted to burn down the building, without success. The last shots were heard around 11.00 p.m. A few hours later, at approximately 2 a.m., the Malian special forces decided to launch an assault. However, when they entered the building, they found only the four surviving Utair employees. The attackers – some of whom may have been wearing uniforms of the Malian Armed Forces – had managed to flee the scene before the intervention of the special forces.[1000]

625. On 11 August 2015, Souleyman Mohamed Kennen, a close associate of Mokhtar Belmokhtar and Amadou Koufa, claimed responsibility for the attack, informing AFP that Amadou Koufa had "given his blessing" for the operation.[1001] On 15 August 2015, responsibility for the attack was also claimed by the Al-Mourabitoun group in a communiqué indicating that the attacker killed had reportedly carried out the operation to avenge his 7-year-old son, allegedly killed by French military forces during the operation of 11 December 2014 in which Abderrahmane Ould Amer (aka Ahmed Al-Tilemsi), a former member of MUJAO and Al-Mourabitoun, was reportedly killed.[1002]

626. Documents consulted by the Commission confirm the responsibility of the Al-Mourabitoun group in that attack. They show that the (identified) assailant killed in the attack was reportedly personally recruited by an (identified) Al-Mourabitoun leader, who also provided him with the weapons and explosive belt he wore during the attack. The documents also revealed that an (identified) Mauritanian man, currently detained by the Malian authorities, allegedly supervised the organization of the attack on the Byblos Hotel by planning, from the city of Mopti, the location and choice of target. In particular, the man reportedly used an (identified) child, who had joined MUJAO at 12 years of age and

[997] Confidential documents of MINUSMA.

[998] Confidential documents of MINUSMA.

[999] Confidential documents of MINUSMA.

[1000] Confidential documents of MINUSMA.

[1001] Jeune Afrique, Mali: un ex-combattant de Belmokhtar revendique l'attaque de Sévaré, 11 August 2015; France 24, Mali: l'attaque de l'hôtel de Sévaré revendiquée par un cadre jihadiste, 11 August 2015.

[1002] AlJazeera.net, Al-Mourabitoun communiqué of 15 August 2015. See also confidential documents from judicial source. See also Le Monde, Les confidences d'"Ibrahim 10", djihadiste au Sahel, 25 February 2019.

had later joined Al-Mourabitoun, to assist him in planning the attack.[1003] Lastly, the automatic weapon of Iranian origin found on the attacker who was killed was of the same model and series as the two automatic weapons found at the Radison Blu Hotel on 20 November 2015, which suggests identical responsibility or, at the very least, a common supplier.[1004]

627. In conclusion, the Commission has reasonable grounds to believe that, on 7 August 2015, several individuals belonging to the Al-Mourabitoun group carried out an attack on the Byblos Hotel in Sévaré during which they killed four employees of a MINUSMA-contracted company.

628. An investigation was opened promptly after the events by the Sévaré gendarmerie brigade with the support of MINUSMA. All but six of the (around 20) persons arrested in the following days were subsequently released.[1005] According to judicial sources, proceedings are currently under way to confirm the responsibility of an (identified) Mauritanian man claiming to be the head of operations for Mokhtar Belmokhtar.[1006] However, the Commission received no official response to its request, addressed to the Malian authorities on 6 December 2019, for judicial follow-up to the case.[1007]

v. 2016-2017 - Attacks on MINUSMA attributable to the Macina katiba and JNIM

29 May 2016 - Ambush against a convoy of the Togolese battalion of MINUSMA 30 km from Sévaré[1008]

629. On 29 May 2016, at approximately 7 a.m., a convoy of 17 vehicles from the Togolese battalion of MINUSMA, which had escorted civilian vehicles from the city of Sévaré to the locality of Ténenkou the previous day, left Ténenkou to return to the city of Sévaré. On the way back, about 27 km north-west of Sévaré, the first vehicle of the convoy, an armoured personnel carrier with five Togolese soldiers on board, hit an explosive device. The explosion threw the vehicle about 19 metres from the point of detonation, killing all five Togolese peacekeepers (all identified). Immediately after the explosion, unidentified armed individuals fired on the Togolese peacekeepers, who returned fire, causing the assailants to flee.[1009] While no one claimed responsibility for the attack, the modus operandi and location suggest the Macina katiba of Amadou Koufa or any other extremist armed groups active in the region.[1010]

630. Upon enquiry by the Commission as to the measures implemented by MINUSMA to ensure that the Malian authorities followed up on the investigation and initiated legal proceedings with respect to

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[1003] Confidential documents from judicial source. See also Le Monde, Les confidences d'"Ibrahim 10" , djihadiste au Sahel, 25 February 2019.

[1004] Confidential document of MINUSMA.

[1005] Confidential document of MINUSMA; Internal memorandum of the Commission of Inquiry dated 31 October 2019 addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, regarding judicial follow-up to the attacks against MINUSMA; Response of the Special Representative of the Secretary-General and Head of MINUSMA dated 17 January 2020 addressed to the Commission of Inquiry regarding judicial follow-up to the attacks against MINUSMA.

[1006] Response of the Malian judicial authorities of 17 February 2020 to the Commission's request of 6 December 2019.

[1007] Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako.

[1008] Case No. CEI85.

[1009] Confidential documents of MINUSMA. See also MINUSMA, convoy of MINUSMA attacked in Sévaré (French), 29 May 2016; RFI, Mali: cinq casques bleus togolais tués dans le centre du pays, 29 May 2016.

[1010] Confidential documents of MINUSMA. See also, Jeune Afrique, Mali: cinq Casques bleus togolais tués dans une attaque, 29 May 2016.

the attack, the Mission indicated that it had no information showing that an investigation was under way.[1011]

14 August 2017 - Attack on the MINUSMA camp in Douentza[1012]

631. On 14 August 2017, between 5.20 a.m. and 6.10 a.m., at least eight assailants attacked MINUSMA camp No. 1 in the city of Douentza, Douentza cercle, with AK-47 automatic weapons, PKM machine guns and hand grenades. The six Togolese peacekeepers responsible for protecting the main gate immediately returned fire with their AK-47s. The Togolese peacekeepers and the camp also came under fire from a PKM machine gun and a 120 mm mortar fired from a hill about 350 metres upriver, south of the camp. The Togolese peacekeepers received rapid reinforcement from the Togolese rapid intervention platoon and from soldiers of the Malian Armed Forces, who attempted to stop the firing from the hill. As they were returning to the camp to provide assistance, an officer from the Togolese rapid intervention platoon and an officer of the Malian Armed Forces (both identified) were killed by a wounded assailant hiding behind one of the HESCO blast walls protecting the base. The peacekeepers of the Togolese battalion then opened fire on two (identified) assailants and killed them. Following the attack four people were arrested: three by the Togolese battalion and one by the local gendarmerie.[1013] The attack was not claimed but its modus operandi and the fact that it coincided with an attack in Timbuktu the same day[1014] suggest the involvement of JNIM, led by Iyad Ag Ghaly, and his Macina katiba.[1015]

632. Upon enquiry by the Commission as to the measures implemented by MINUSMA to ensure that the Malian authorities followed up on the investigation and initiated legal proceedings with respect to the attack, the Mission indicated that it had no information showing that an investigation was under way.[1016]

[1011] Internal memorandum of the Commission of Inquiry dated 31 October 2019 addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, regarding judicial follow-up to the attacks against MINUSMA; and response of the Special Representative of the Secretary-General and Head of MINUSMA dated 17 January 2020 addressed to the Commission of Inquiry regarding judicial follow-up to the attacks against MINUSMA.

[1012] Case No. CEI86.

[1013] Confidential document of MINUSMA. See also MINUSMA, Attack on MINUSMA in Douentza (French), 14 August 2017.

[1014] See case No. CEI75.

[1015] Confidential document of MINUSMA.

[1016] Internal memorandum of the Commission of Inquiry dated 31 October 2019 addressed to the Special Representative of the Secretary-General and Head of MINUSMA, Mahamat Saleh Annadif, regarding judicial follow-up to the attacks against MINUSMA; Response of the Special Representative of the Secretary-General and Head of MINUSMA dated 17 January 2020 addressed to the Commission of Inquiry regarding judicial follow-up to the attacks against MINUSMA.

vi. 8 January 2016, - Summary execution of two brothers from the Fulani community by Malian Armed Forces soldiers in the locality of Karena[1017]

633. According to detailed investigations by the Human Rights and Protection Division of MINUSMA, which the Commission was able to corroborate, on 8 January 2016, two members of the Fulani community (brothers aged 48 and 53 and identified) were killed in a hamlet in the village of Bingere Mohamoud (Kerena commune, Douentza cercle) by members of the Malian Armed Forces from Douentza during a firearms search operation in the village. According to corroborating sources interviewed by the Human Rights and Protection Division at the time of the events, the two brothers did not belong to any armed group. According to reports, the first victim was arrested by Malian Armed Forces soldiers and forced into their vehicle, which then drove away far from the village. A few minutes later, the villagers heard gunshots coming from the direction taken by Malian Armed Forces soldiers. The second victim then left the village in search of his older brother. An hour later, some villagers also went out looking for the two brothers, only to discover the two bodies in a hamlet near the village, in a shallow, freshly dug grave.[1018] Human Rights Watch has also publicly reported an identical version of those events.[1019]

634. According to the information gathered, the commander of the Malian Armed Forces in Douentza, a colonel (identified), acknowledged that the two brothers had been arrested under his command and in his presence, but said that they had subsequently been released. He denied the allegations that the two Fulani men were killed by the Army, and claimed that they could have been executed by a member of an Islamist armed group after the Malian Army left the village.[1020] The testimonies collected by the Human Rights and Protection Division and consulted by the Commission contradict that version, which seems to lack credibility. The Commission notes in particular that witnesses clearly heard gunshots shortly after the Malian Armed Forces left, although the colonel did not say that there had been any fighting that day between his men and alleged members of extremist armed groups. In the light of those facts, the Commission considers that there are reasonable grounds to believe that the two brothers were executed and buried by Malian Armed Forces soldiers from Douentza who had come to the village that day. The Commission has not received any information about any judicial measures that may have been taken in relation to those events. The Commission asked the Government of Mali about any existing legal proceedings involving Malian Armed Forces soldiers, but had not received a response by the date of submission of the present report.[1021]

vii. 19 December 2016 - Summary execution of six people by the Malian Armed Forces in the village of Isseye[1022]

635. Starting in 2012, Douentza, located on the border with Burkina Faso, was taken over by extremist armed groups (notably MUJAO), which took advantage of the absence of the State and the frustration of the local population following the pillaging by MNLA to establish themselves in the cercle.[1023]

[1017] Case No. CEI 87.

[1018] Confidential document of HRPD, MINUSMA.

[1019] HRW, Mali conflict and aftermath, compendium of Human Rights Watch reporting 2012-2017, 2017, pp. 11-12.

[1020] Confidential document of HRPD, MINUSMA.

[1021] Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali.

[1022] Case No. CEI 88.

[1023] FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018, pp. 23-24.

Starting in 2015, the villages and forests of Douentza cercle gradually became a sanctuary for extremist armed groups (in particular the Macina katiba, the Gourma katiba and the Burkinabe group Ansar-al-Islam). The groups collected food from the local population, preached their ideology and recruited new members, but also carried out numerous attacks against the Malian Armed Forces and their allies or their perceived supporters. In response, in 2016, the Malian Armed Forces, supported by the French forces of *Operation Barkhane*, conducted large-scale "counter-terrorism" operations in the area.[1024] Human rights organizations and the United Nations, however, decried the abuses committed by the Malian Armed Forces against civilians - particularly Fulani - during those operations.[1025] The allegations against the Malian Armed Forces were confirmed in the Commission's investigations, including its forensic analyses.[1026]

636. On the basis of the information it obtained and the investigation carried out by the Human Rights and Protection Division of MINUSMA – the methodology of which it found credible and reliable after careful analysis – the Commission considers that there are reasonable grounds to believe that, on 19 December 2016, four Fulani men (identified) and two boys aged 15 and 16, one Fulani (identified) and the other unidentified, were executed near the village of Isseye, in Mondoro commune, Douentza cercle, by Malian Armed Forces soldiers from the Mondoro military base.

637. On 19 December 2016, at approximately 11 a.m., Malian Armed Forces soldiers drove in several pick-up trucks directly to the home of the chief of the village (identified) of Isseye, approximately 90 km north-west of Mondoro, and arrested him, along with another (identified) man. The soldiers also went around the village insulting and threatening the inhabitants, especially individuals from the Fulani community. During that patrol, another man (identified) was arrested after refusing to reveal his identity. The three men arrested, all from the Fulani community, were driven off to the Isseye school. Along the way, two (identified) Fulani brothers, a man and his 15-year-old brother riding a motorcycle, were also arrested.[1027]

638. Around 4 p.m., the inhabitants of Isseye heard a series of shots outside the village and, less than an hour later, saw the soldiers leaving, heading for Mondoro. In the days that followed, the families of the individuals arrested tried in vain to find out from the military authorities what had happened to their relatives.[1028]

639. Two days after those events, in the hamlet of Petebodje, located just over 2 km west of the village of Isseye, the villagers found a pool of blood, twelve casings of the same calibre, and steps running more than 50 metres leading to a mound of sand that seemed to superficially conceal some bodies. The villagers informed the Boni gendarmes, who refused to intervene because the Malian Armed Forces were involved in the incident. The gendarmes, however, allowed the villagers to dig up the ground to free the bodies for identification. Several inhabitants then opened the grave, which was covered with just a small amount of sand, and unearthed the bodies of six individuals, buried one on top of the other,

[1024] Malian Armed Forces, *Operation SENO*,"La grande offensive contre les ennemis de la paix se poursuit, 26 January 2016; French Ministry of Defence, Barkhane : opération transfrontalière Panga dans la boucle du Niger élargie, 14 April 2017; French Ministry of Defence, Barkhane : opération transfrontalière Panga dans la boucle du Niger élargie, 28 June 2017.

[1025] HRW, Mali: Unchecked abuses in military operations, 8 September 2017.

[1026] Notably on the basis of photographs taken at the time of the events.

[1027] Confidential documents of HRPD, MINUSMA.

[1028] Confidential documents of HRPD, MINUSMA.

blindfolded and their hands tied behind their heads with a piece of cloth. Even though the bodies had started decomposing, family members were able to identify the victims through their clothing. Of the six bodies identified, five were those of the individuals arrested on 19 December 2016. According to uncorroborated information, the last body was that of a young boy who had disappeared and whose brother had been searching for him for several days in the vicinity. Following a brief religious ceremony, the bodies were placed back in the grave and covered with sand, stones and branches.[1029]

640. The Commission considers that there are reasonable grounds to believe that the Malian military and judicial authorities were aware of those facts and that they took no action to prosecute the alleged perpetrators or their superiors (identified). The Malian authorities should have been able to take up the case, as those facts were summarized with sufficient clarity in several public reports issued by Human Rights Watch in April and September 2017. The Commission was also able to confirm the allegations in those reports that "the Boni gendarmes were aware of the killings", but that they could not have intervened for fear of reprisals by soldiers of the Malian Armed Forces.[1030]

641. The Commission received alleged information that an investigation had been opened at the Douentza brigade, but to date no proceedings have been initiated against the alleged perpetrators.[1031] The Commission asked the Government of Mali about any existing legal proceedings involving Malian Armed Forces soldiers, but had not received a response by the date of submission of the present report.[1032]

642. The Commission notes that, in such context, victims often find themselves trapped between the extremist armed groups, who suspect them of cooperating with the Malian authorities, and Malian Armed Forces soldiers, who associate them with terrorists. In that particular case, the Commission has reasonable grounds to believe that the extremist armed groups put pressure on and threatened some of the victims and their relatives. One of the witnesses interviewed by Human Rights Watch seemed to sum up the dilemma faced by the majority of the people in the region perfectly: "We are not aware of any investigation... To date, no one has contacted us - no one is trying to find those who murdered members of our community. Imagine, in 2015, the chief himself was detained and tortured by jihadists, and now the authorities have killed him.[1033]

viii. May 2017 - Abuses committed by the Malian Armed Forces in Douentza cercle during the "Panga-2 / Branco" counter-terrorism operation[1034]

643. The Commission also documented many abuses committed by the Malian Armed Forces during *Operation "Panga-2 / Bronco"* in May 2017, in the vicinity of the commune of Mondoro, in Douentza cercle.

Background

[1029]Confidential documents of HRPD, MINUSMA.

[1030]HRW, Mali: Spate of killings by armed groups, 5 April 2017; HRW, Mali: Unchecked abuses in military operations, 8 September 2017.

[1031]Testimonies Nos. 480 and 516.

[1032]Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[1033]HRW, Mali: Spate of killings by armed groups, 5 April 2017.

[1034]Case No. CEI 89.

644. From 27 March to 10 April 2017, the Malian and Burkinabe Armed Forces, supported by the French forces of *Operation Barkhane,* conducted a joint cross-border military operation called "Panga" in the Foulsaré forest (also known as the Fhero forest), south of Hombori (and east of Mondoro), in Douentza cercle.[1035] According to the French Ministry of Defence, 2 members of extremist armed groups were killed during the fighting, 8 were taken prisoner and 200 suspects were arrested.[1036] During the operation, the French forces collected intelligence which they were able to use in another military operation at the end of April 2016 (known as "Bayard"), during which some 20 members of extremist armed groups were killed.[1037] The Malian Armed Forces supported the Burkinabe and French forces by conducting field operations in villages in the region, including in the commune of Mondoro, in May 2017.[1038] The operation of the Malian Armed Forces was called "Panga-2 / Bronco".

Arrests of 2 May 2017

645. On 2 May 2017, at approximately 4 p.m., a Malian Armed Forces contingent participating in *Operation "Panga-2 / Bronco"* arrested several people (mainly Fulani men and two Songhaï women) from the villages of Monikani and Douna, in the commune of Mondoro, suspected of belonging to or assisting extremist armed groups. The suspects were taken to the Boni military camp in Douentza cercle, where they were violently beaten by Malian soldiers with sticks to force them admit that they belonged to extremist armed groups, threatening to kill them if they did not confess.[1039] The next day, they were taken by an Army captain (identified) to the camp of the fifth National Guard group in Sévaré, where they were interrogated by gendarmes from the Mopti search brigade (identified).[1040] Three of the detainees died as a result of the beating they received at the hands of the Malian Armed Forces; the first two bodies (unidentified) were deposited by the soldiers at the Sominé Dolo hospital before they reached the Sévaré camp, while the third, a young Fulani man in his twenties, died at the Sévaré camp as a result of beating he received at the hands of the Malian Armed Forces during his transfer from the place of arrest to the Sévaré camp.[1041]

646. A dozen other individuals (including at least four identified boys) were arrested the same day in the village of Kobou (commune of Mondoro) by Malian and other soldiers - presumably Western soldiers - who handed them over to a contingent of the Malian Army in Douna. The Malian Armed Forces also arrested four people, including a 14-year-old Fulani boy, in Douna that same day. The Commission did not receive any information that the detainees were mistreated. After spending a night in the bush around Douna, they were taken to Sévaré, where they met other detainees, including the individuals who had been arrested the day before in Monikani and Hombori.

[1035]French Ministry of Defence, Barkhane : opération transfrontalière Panga dans la boucle du Niger élargie, 14 April 2017.

[1036]French Ministry of Defence, Barkhane : opération transfrontalière Panga dans la boucle du Niger élargie, 14 April 2017. See also RFI, Mali : la force Barkhane indique avoir tué deux terroristes durant une opération, 16 April 2017.

[1037]French Ministry of Defence, Press release, Point de situation sur les opérations au 04 mai 2017, 4 May 2017.

[1038]Malian Armed Forces: FAMa et partenaires neutralisent des terroristes à la frontière Mali Burkina Faso, 4 May 2017.

[1039]Confidential testimonies obtained by HRPD, MINUSMA.

[1040]The names of the gendarmes and military personnel identified in connection with that incident are listed in a confidential annex to the present report.

[1041]Confidential interviews conducted by HRPD, MINUSMA on 20 and 21 June 2017.

647. The individuals arrested that day were taken to Bamako and handed over to the DGSE, which held them in the State security detention centre for more than a month. On 9 June 2017, the detainees were transferred from the centre to Bamako gendarmerie camp No. 1, where they were held until 5 July 2017, before being released for lack of evidence, without ever being brought before a judge.[1042]

[1042] See below case No. CEI99.

Arrests of 6 to 8 May 2017

648. On 6 May 2017, six Fulani cattle herders (all identified) were arrested in different villages in the commune of Mondoro by Malian Armed Forces soldiers (some of whom were identified) for their alleged proximity to extremist armed groups. All six suspects were bound and blindfolded. During their transfer to the gendarmerie station in Sévaré (via Boni and Douentza), which lasted more than 24 hours, they were violently kicked and punched and beaten with rifle butts and iron bars and left in the sun with no water or food. When they arrived at the gendarmerie station, the next day, one of the detainees (identified), aged 24, was taken to the Somino Dolo hospital in Sévaré in critical condition. He died the next morning from his injuries.[1043]

649. On 7 and 8 May 2017, the third regiment of the GTIA-Waraba of Douentza, under the command of a warrant officer (identified), arrested ten other Fulani men (all identified) in villages in the communes of Mondoro and Haire. Those individuals were also violently beaten during their arrest and during the entire journey to the Boni military camp. Once at the camp, soldiers conducted mock executions, including putting the detainees in a hole, blindfolding them and beating them violently on the head and spraying them with a liquid presented as gasoline, shouting that they would be burned to death for being members of extremist armed groups. After the mock executions, the detainees were taken to the gendarmerie station in Sévaré, where they were held with the other Fulani arrested in the region.[1044] On 9 May 2017, all the detainees were taken to Bamako gendarmerie camp No. 1. They were released almost a month later, on 5 July 2017, without ever being brought before a judge.[1045]

Arrests of 21 May 2017

650. On the morning of 21 May 2017, during searches and patrols in Fulani camps and hamlets around Mougnokana, in the commune of Mondoro, members of the National Guard based in Mondoro (number and identity unknown) found eight automatic weapons. During that operation, the National Guard soldiers arrested 16 men, mostly Fulani, including at least two boys (identified). The 16 suspects were transported, blindfolded, with their hands and feet tied, to the locality of Mondoro. During the journey, the detainees were repeatedly punched, kicked and beaten with butt stocks and sticks. The National Guard soldiers stopped somewhere along the way and started digging a hole to bury the detainees, but gave up after a soldier objected. The National Guard soldiers and the detainees spent four days at the camp in Mondoro, during which time the detainees, who were still tied up, were beaten several times and given very little food and water.[1046]

651. On 25 May 2017, the detainees were taken to the Sévaré military camp, where they spent two days, still subjected to violence and beatings. One of the detainees, a resident of Mougnokana, of Burkinabe origin (identified), died of his injuries while in the custody of the National Guard.[1047] On 27 May 2017, the surviving detainees were taken to the national gendarmerie station in Mopti and then

[1043] Confidential interviews conducted by HRPD, MINUSMA on 16 and 17 May 2017.

[1044] Confidential interviews conducted by HRPD, MINUSMA.

[1045] Database of HRPD, MINUSMA.

[1046] Database of HRPD, MINUSMA.

[1047] Confidential testimonies obtained by HRPD, MINUSMA on 30 May and 6 June 2017.

transferred to Bamako gendarmerie camp No. 1. Four of the detainees, including the two boys, were taken to the DGSE before the two boys were handed over to child protection services on 9 June 2017.[1048]

652. The Commission notes that the accounts of many villagers reflected the difficulty of being caught between extremist armed groups and the Malian Army. As one victim explained: "The terrorists cross the border from Burkina Faso to force us to listen to their speeches and follow their recommendations, and then the Malian military comes to arrest the villagers en masse. They can arrest more than 40 people for a single suspect”.[1049]

653. The Commission notes that none of the victims identified filed a complaint, not only because they were afraid of reprisals by the military, but also because they were not familiar with and did not trust the Malian judicial system to deliver justice for the abuses committed by the Malian Armed Forces, which they associated with the State. Most of the time, the victims preferred not to return to their villages and families for fear of reprisals.[1050] The Commission asked the Government of Mali about any existing legal proceedings involving Malian Armed Forces soldiers, but had not received a response by the date of submission of the present report.[1051]

ix. 30 April and 1 May 2016 - Execution of 22 Fulani inhabitants of Malemana attributable to traditional hunters from the Bambara community of the villages of Malemana and Koroguiri[1052]

654. The central Delta area of the Niger River on the borders between the regions of Ségou (Niono and Macina cercles) and Mopti (Ténenkou cercle) was the epicentre of the initial abuses between the Fulani and Bambara communities, which grew exponentially in 2018 and 2019 in both regions.[1053]

655. Traditional hunters (Dozos), mostly from the Bambara community, have organized themselves in Macina cercle since 2016. They set up checkpoints in order to protect the people and their property in the villages and the communes. These hunters, whose traditionally weapons were single-shot rifles, but who now move around with automatic weapons, are financed by the local population. They are led by traditional hunters from the village or commune and assist each other.[1054] This set-up and the proliferation of weapons have exacerbated long-standing tensions between the traditionally pastoral Fulani communities and the traditionally agricultural Bambara communities over access to land and water resources. Extremist armed groups in the area have exploited these tensions to exert control and influence over the area.

[1048]Confidential testimonies obtained by HRPD, MINUSMA on 30 May and 6 June 2017; See below case No. CEI99.

[1049]Confidential testimonies obtained by HRPD, MINUSMA.

[1050]Testimonies Nos. 480 and 516.

[1051]Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[1052]Case No. CEI 90.

[1053]HRW, "We used to be brothers", Self-defence group abuses in Central Mali, 7 December 2018, p. 35; FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018; See also testimonies Nos. 434, 266 and 278.

[1054]Testimonies Nos. 300, 299, 302, 277 and 313. Under the pretext of protecting the civilian population, some of those groups were accused of having committed attacks and abuses against the civilian population of Fulani villages. A case in point were the attacks carried out by traditional Bambara hunters on 12 February 2017 in several hamlets in Macina cercle that were investigated by the Commission. See case No. CEI95 below.

656. For example, on 13 April 2016, three (identified) Fulani cattle herders went to the home of the chief (identified) of Koroguiri village to settle a dispute over access to a well for their animals, but found that he was absent. A dispute then broke out between the visitors and the chief's sons (at least one of whom was identified), during which the three Fulani cattle herders were fatally shot.[1055]

657. On 30 April 2016, at approximately 10 a.m., six individuals on motorcycles, armed with weapons of war, murdered the deputy mayor of the village of Dioura (identified) and one of his friends, a peasant from the commune of Diguicire (identified), on the road between Finadji and Malemana, approximately 48 km south of Dioura, in the commune of Karéri. A third man who accompanied them (identified) also suffered serious gunshot wounds during the attack and was evacuated to the medical centre in Niono.[1056] Although the assailants were not formally identified, the local Bambara community, to which the three victims belonged, suspected that the perpetrators were young Fulani men affiliated with the Macina katiba. At a meeting held on the same day, traditional Bambara hunters from the villages of Malemana and Koroguiri decided to exact revenge for those executions and the murder of one of their members a few days earlier (identified), and to carry out reprisal attacks against the men of the Fulani community.[1057] Around 3pm, relatives of the elected representative of the village of Dioura (two of whom were identified) went to the market in Malemana (commune of Karéri) and killed four Fulani (identified) who were buying meat from a local merchant.[1058] Questioned by members of the Fulani community about how to handle the burial of the bodies, the chief of Malemana asked them to wait until the following day, to allow the authorities to come and make a judicial finding on the murders. The authorities did not come.[1059]

658. The next day, 1 May 2016, as the Fulani community of Malemana were burying the four dead from the previous day at the village cemetery, the traditional hunters (Dozos) from the villages of Malemana and Koroguiri (about 20, several of whom were identified) went to the cemetery and opened fire on the Fulani men there, killing nine of them (identified).[1060] Seven other (identified) Fulani men were shot around two wells in the vicinity of the village. Two other Fulani men (identified) who were trying to flee were caught and fatally shot in the village. Several others were pursued and fired upon but managed to escape. A total of 18 Fulani men were killed and at least 7 others injured in the attacks of 1 May 2016.[1061] The women and children who were with them were spared. The assailants buried the dead in two mass graves in the village.[1062]

[1055] Report of HRPD, MINUSMA. Confidential report of UNPOL; Picture painted by witness No. 300.

[1056] Confidential report of UNPOL.

[1057] Document from a judicial source; Confidential report of UNPOL.

[1058] Testimony 300, paras. 37-39 and picture painted by the witness; Confidential report of UNPOL; Report of HRPD, MINUSMA; Testimony No. 313, para. 26; Document from a judicial source.

[1059] Confidential report of UNPOL; Report of HRPD, MINUSMA; Testimony No. 313, para. 26; Document from a judicial source.

[1060] Testimony No. 313, paras. 26-28, Report of HRPD, MINUSMA; Confidential report of UNPOL; See also L'Indicateur du Renouveau, Affrontement intercommunautaire: Les dessous du carnage de Ténenkou, 5 May 2016.

[1061] Document from a judicial source; See also testimonies Nos. 313, para. 27 and 300, paras. 37-39, and picture painted by the witness.

[1062] Document from a judicial source.

Consequences, perpetrators and judicial follow-up

659. The next day, Malian Armed Forces soldiers based in Ténenkou arrived in Malemana and Koroguiri to stabilize the situation. Although calm returned gradually, the traditional Bambara hunters were still seen carrying weapons and setting up roadblocks on the roads of the commune. Several political initiatives were made to try to quickly stop the cycle of violence. On 7 May 2016, a government delegation comprising several ministers, the President of the High Court and local authorities travelled to Dioura to try to defuse the situation between the communities.[1063] An inter-community dialogue meeting was also held between the Bambara, Fulani, Tuareg and Bella Tuareg communities at the end of June 2016, in the village of Dioura, capital of the commune of Kareri.[1064]

660. The judicial authorities responded quickly by immediately opening an investigation into the incidents, leading to the arrest of 37 people, 12 of whom were detained on 18 May 2016. The investigation led to the referral to the Mopti Court of Appeal in April 2017 of 12 (identified) alleged members of the Bambara militia, including its alleged leader, for murder, attempted murder, accessory to murder, and illegal possession of firearms. At the trial in the Mopti Court of Appeal on 20 November 2017, three of the defendants accused of having participated in the murder of the three Fulani on 13 April 2016 acknowledged having participated in the events and were given five-year suspended sentences. The other nine accused denied the authenticity of the investigation reports in which they had admitted the facts and were acquitted.[1065]

661. The violence led more than 1,800 people, mostly from the Fulani community, to flee the area and seek refuge in the Fulani communities of Diabali and Nampalari communes.[1066] Several young Fulani men from villages in the commune were also reported to have joined extremist armed groups as a result of those attacks.[1067]

x. 16-17 June 2017 - Violence between the Dogon and Fulani communities in Koro cercle[1068]

662. In late 2016, following the murder of a renowned traditional hunter, Théodore Somboro, which was attributed to Fulani men, a number of groups of traditional hunters from the Mopti and Ségou regions reactivated and reorganized the Dan Na Ambassagou group. As in the case of the groups of Bambara hunters, the members of Dan Na Ambassagou obtained military weapons and set up roadblocks on the main roads around their villages, which exacerbated existing tensions between the Fulani and Dogon communities in the Koro area. Against that backdrop, the execution of a traditional hunting chief attributed to young Fulani men and the immediate retaliation by Dogon traditional hunters

[1063] Malijet, Conflit intercommunautaire à Tenenkou : le ministre de la Défense annonce un détachement de l’armée, 11 May 2016; Confidential report of HRPD, MINUSMA.

[1064] Report of the Independent Expert on the situation of human rights in Mali (A/HRC/34/72), 10 February 2017, paras. 57-58; Bamada.net, Ténenkou : Rencontre de Dialogue intercommunautaire à Dioura pour faire définitivement la paix,, 21 July 2016.

[1065] Document from a judicial source.

[1066] Report of the Independent Expert on the situation of human rights in Mali (A/HRC/34/72), 10 February 2017; Confidential report of HRPD, MINUSMA.

[1067] Testimony No. 300, paras. 37-39.

[1068] Case No. CEI91.

plunged Koro cercle into a cycle of violence and reprisals that resulted in many deaths and displaced thousands of people from the local communities.[1069]

663. On the evening of 16 June 2017, approximately 60 km from the city of Koro, a renowned Dogon hunter from the commune of Diankabou village was killed by armed men as he was returning with his son from Douna market by motorcycle. The villagers identified the killers (not by name) as young Fulani men from the commune of Dioungani.[1070] Although no one claimed responsibility for the murder, the modus operandi, the crime scene and the identity of the victim suggest that the perpetrators were young men who belonged to or had links with the Macina katiba, which was particularly active in the area.

664. The following day, Dogon hunters from Koro cercle organized a series of retaliatory attacks against a number of Fulani hamlets that they suspected of colluding with extremist armed groups, in particular the hamlets of Nawodie and Tanfadala. The attacks left at least 39 Fulani villagers dead and many others wounded.[1071] Given that the victims included children and older persons, there is no doubt as to their civilian status. Although no one claimed responsibility for the attack, the Commission has reasonable grounds to believe that it was carried out by members of the Dan Na Ambassagou group, who were particularly active in Koro, the apparent region of origin of the murdered Dogon hunter from the commune of Diankabou village.[1072]

665. In the days that followed, several Dogon villages were in turn attacked. Despite the efforts of organizations from both communities to defuse the situation, the violence spread rapidly to the communes of Dioungani, Bondo and Dinangourou, in the eastern part of Koro cercle, which also suffered deadly attacks. The cycle of violence continued to intensify and spread throughout the Mopti region, gradually reaching the cercles of Bankass and Bandiagara, followed by those of Djenné, Ténenkou and Douentza.[1073] From 2018 onwards, violence in the region reached a scale hitherto unknown in Mali. It peaked in 2019, with deadly attacks on civilians in the villages of Koulogon (1 January 2019) and Ogossagou (23 March 2019), which were blamed on Dogon self-defence groups, in particular Dan Na Ambassagou, and the attack on the village of Sobane-Ba (9 June 2019), which human rights organizations attributed to a Fulani self-defence group. While those three attacks were the most emblematic on account of their scale, they were not isolated and hundreds of abuses against civilians attributable to Islamist armed groups and self-defence groups were documented in central Mali in 2018 and 2019 by the Human Rights and Protection Division of MINUSMA and other human rights

[1069] HRW, “We used to be brothers”, Self-defence group abuses in central Mali, 7 December 2018; FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018; See also testimonies Nos. 434, 266 and 278.

[1070] Confidential reports of UNPOL; HRW, “We used to be brothers”, Self-defence group abuses in central Mali, 7 December 2018, p. 36; See also VOA Afrique, Une trentaine de morts dans des violences intercommunautaires dans le centre du Mali, 20 June 2017.

[1071] Confidential document from a medical source; Testimony No. 336, paras. 1-2 and testimony No. 278, paras. 15-16; HRW, “We used to be brothers”, Self-defence group abuses in central Mali, 7 December 2018.

[1072] Testimony No. 278; HRW, “We used to be brothers”, Self-defence group abuses in central Mali, 7 December 2018, p. 29; See also Slate.fr, Au centre du Mali, des groupes d'autodéfense ont remplacé l'État, 25 February 2020.

[1073] HRW, “We used to be brothers”, Self-defence group abuses in central Mali, 7 December 2018; FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018. See also Maliactu.net, Mali : Koro : Les affrontements intercommunautaires ont repris, 7 March 2018; Testimonies Nos. 434, 266 and 278.

organizations.[1074] Sources differ as to the exact number of deaths that resulted from attacks by self-defence and extremist armed groups in central Mali, but all agree that the death toll was in the hundreds.[1075]

5. Ségou region

666. From 2015, the Macina katiba of JNIM pursued a strategy of executions and kidnappings that targeted State representatives and influential local figures in the Mopti and Ségou regions. The katiba believed that those individuals were refusing to cooperate with it and were supporters of the Government or the international forces. As the number of incidents increased, many village chiefs and imams had to leave the area and take refuge in Bamako. The aim of the strategy was to create a State vacuum so that the katiba could expand its influence in the area. From that point on, the group controlled large areas of central Mali.[1076] From all allegations it received**,** [1077] the Commission decided to document the execution of the imam of the village of Barkerou and the abduction of the President of the Court of Niono.

i. 13 August 2015 - Execution of the imam of the village of Barkerou attributable to the Macina katiba[1078]

667. On the evening of 13 August 2015, two (unidentified) armed individuals speaking Fulfulde arrived at the imam's home in the village of Barkerou, Niono cercle. The two men, who had arrived by

[1074] See for example, HRW, "We used to be brothers", Self-defence group abuses in central Mali, 7 December 2018; HRW, "How much more blood must be spilled?" Atrocities committed against civilians in central Mali, 2019, February 2020; FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018; HRPD, MINUSMA, Press release, Conclusions de la mission d'enquête spéciale sur les graves atteintes aux droits de l'homme commises à Ogossagou le 14 février 2020, 18 March 2020; MINUSMA and OHCHR, Report on the serious human rights violations committed during the attack on the village of Sobane Da (Mopti region) on 9 June 2019 (French), 10 July 2019; HPRD, MINUSMA, Conclusions préliminaires de la mission d'enquête spéciale sur les graves atteintes aux droits de l'homme commis à Ogossagou le 23 mars 2019, 2 May 2019; HRPD, MINUSMA, Joint MINUSMA-OHCHR press release, Conclusions de la mission d'enquête spéciale sur les graves abus des droits de l'homme à Koulogon Peul, dans la région de Mopti, 29 January 2019.

[1075] FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counterterrorism, November 2018, p. 7 ("The human cost of the crisis in Central Mali for the last two years would be at least 1,200 killed; hundreds injured; and probably almost 30,000 displaced and turned into refugees" - in November 2018); HRW, "We used to be brothers", Self-defence group abuses in central Mali, 7 December 2018, p. 29; "How much more blood must be spilled?" Atrocities committed against civilians in central Mali, 2019, February 2019, p.20 (" Human Rights Watch estimates the number of civilians killed in communal attacks in central Mali in 2019 to be much higher than the 340 killings documented in this report, given the steady stream of reprisals"); See also the statement by the Independent Expert on the situation of human rights in Mali, in which he said that "continuing deadly attacks on civilians in certain areas of the country could be described as crimes against humanity". United Nations, Mali: Cycle of violence against civilians must stop, says UN expert, 14 June 2019.

[1076] See the section on the Macina katiba, under **"**Main actors in the 2012 Malian crisis**"**; See also FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018, p.8.

[1077] For other examples between 2015 and 2017, see Maliweb.net, Terrorisme : Un 2ème imam tué par les hommes d'Hamadoun Kouffa, 17 August 2015 (execution of the chief of Dogo village in April 2015); Confidential report of UNPOL (execution of a traditional hunter from the village of Dadjan on 17 August 2016); Confidential report of UNPOL (execution of a forest guide and an agricultural officer during the night of 8 to 9 October 2017 in Tominian); See also case No. CEI81.

[1078] Case No. CEI92.

motorcycle, greeted the imam and asked him to follow them outside. After a brief discussion, one of the two men fired several bullets at the imam, killing him instantly. Sources differ as to the motive for the murder. Some sources pointed to his moderate practice of Islam, while others mentioned his role in denouncing to the Malian Armed Forces a young herder from the village who had allegedly joined extremist armed groups. Given the modus operandi (targeted execution by two armed men on motorcycles), the general context (the Macina katiba was the extremist armed group active in the area at that time) and the specific context (the victim was opposed to the positions adopted by the Macina katiba), it can be concluded that the perpetrators of the execution belonged to the Macina katiba.[1079] To the Commission's knowledge, no investigation or judicial proceedings concerning the execution have been initiated.[1080] The Commission asked the Malian authorities whether judicial measures had been taken in relation to the case, but had not received a response by the date of submission of this report.[1081]

[1079]Testimony No. 274, paras 29-35 and testimony No. 300, paras. 72-75; See also Jeune Afrique, Mali: un imam tué par des jihadistes, 17 August 2015; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012-2017, 2017, p. 38.

[1080]Testimonies Nos. 274 and 289.

[1081]Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale of 12 March 2020 addressed to the Ministry of Justice.

ii. 16 November 2017 - Abduction of the President of the Court of Niono, for which JNIM claimed responsibility[1082]

668. On 16 November 2016, at around 8 p.m., the President of the Court of Niono was abducted from his home on the outskirts of Niono. The assailants, several (unidentified) armed individuals, arrived in a white 4x4 vehicle.[1083] In a video dated December 2018, the President of the Court of Niono, who by that point had been in captivity for more than two years, said that he was being well treated by the hostage-takers and that his captors, in return for his release, were demanding the application of Islamic law in Mali and the release of a number of prisoners. In February 2019, during an interview between a journalist and a member of the Macina katiba, the latter announced the death in captivity of the President of the Court of Niono. He reportedly died of illness, as did the commander of the Guiré brigade, who had been abducted by the Macina katiba on 18 October 2017.[1084]

669. Following the deaths in captivity of the President of the Court of Niono and the commander of the Guiré brigade, the Government of Mali negotiated the release of the prefect of Ténenkou cercle, who had been kidnapped on 8 May 2018, and that of a Malian journalist who had been kidnapped on 27 December 2018. In a press release dated 19 February 2019, the Government of Mali welcomed their release without specifying the terms. The Commission was able to confirm that the two hostages were released in return for the release of at least 17 detainees from Bamako remand prison, including the former head of the Islamic police in GAO for MUJAO, Aliou Mahamane Touré, who had been found guilty and sentenced to 10 years' imprisonment by the Assize Court of Bamako in August 2017. According to a credible witness corroborated by another reliable source, Aliou Mahamane Touré and at least two other detainees were removed from their place of detention at the request of the Special judicial unit.[1085] Aliou Mahamane Touré was arrested again by the French forces of *Operation Barkhane* on 29 November 2019 in the Gao region.[1086]

670. The day after the President of the Court of Niono was kidnapped, four other judges from Niono left the locality to take refuge in the city of Ségou. The Court of Niono did not reopen until 26 December 2017.[1087] The abduction had a negative impact both on the functioning of the judicial system in the Ségou region and on the deployment of judges in other regions of Mali.[1088] It illustrates the difficulties

[1082] Case No. CEI93.

[1083] Testimony No. 289, paras. 35-41; See also Sahélien.com, Exclusif/Mali : deux otages maliens seraient décédés dans le centre du pays, un autre témoigne dans une vidéo, 15 February 2019; Maliweb, Ségou: Enlèvement du président du tribunal d'instance de Niono, 17 November 2017; Maliweb, Un an après l'enlèvement de son président Soungalo Koné : comment fonctionne le tribunal de Niono, 20 December 2018.

[1084] Testimony No. 289, paras. 42-45; See also VOA Afrique, Un président de tribunal enlevé au Mali apparaît dans une vidéo, 5 December 2017; See also Sahélien.com, Exclusif/Mali : deux otages maliens seraient décédés dans le centre du pays, un autre témoigne dans une vidéo, 15 February 2019.

[1085] Conviction order of the Assize Court of Bamako, regular session of 18 August 2017, 12 October 2017; Government of Mali, Press release of 19 February 2019; Confidential document of HRPD, MINUSMA; Testimony No. 497.

[1086] RFI, Mali : l'ex-chef jihadiste Aliou Mahamane Touré à nouveau arrêté, 1 December 2019; Testimony No. 525.

[1087] Testimony No. 289, paras. 35-41. See also Sahélien.com, Exclusif/Mali : deux otages maliens seraient décédés dans le centre du pays, un autre témoigne dans une vidéo, 15 February 2019; Maliweb, Un an après l'enlèvement de son président Soungalo Koné : comment fonctionne le tribunal de Niono, 20 December 2018.

[1088] Testimony No. 305, paras. 23-24.

encountered by the judicial administration in maintaining a presence throughout the country and the security problems faced by the Malian judicial authorities.

671. In conclusion, there are reasonable grounds to believe that the President of the Court of Niono was abducted on 16 November 2016 by unidentified members of the Macina katiba of the JNIM group and died in captivity in February 2019. An investigation was opened by the Special judicial unit. One man (identified) was initially charged with being an accessory to the kidnapping of the President of the Court of Niono, but the charges were dropped in November 2019.[1089]

iii. 7 April 2016 - Ill-treatment and torture of seven Fulani men attributable to soldiers of the Malian Armed Forces from the Diabali military camp[1090]

672. Despite public denunciations of abuses committed by soldiers from the Diabali military camp against members of the Tuareg and Fulani communities in 2012 and 2013,[1091]soldiers of the Malian Armed Forces from the Diabali camp continued to commit abuses during “anti-terrorist operations”, which increased in the Ségou region from 2015.[1092]

673. In its investigations, the Commission was able to confirm, through testimonies and forensic analyses, that on 7 April 2016, seven (identified) men from the Fulani community were arrested by soldiers of the Malian Armed Forces on suspicion of cooperating with extremist armed groups. The soldiers arrested the seven men in the localities of Sokolo and Dogofri and then took them back to their camp in Diabali, where they were detained.

674. Around midnight, the seven Fulani men were taken out of their cell and stripped. They were blindfolded and their hands and feet were tied together behind their backs. They were then transported in a vehicle to an unknown destination. Throughout the journey, the soldiers threatened to kill them. Upon arrival at their destination, the seven men were violently beaten and burned with what witnesses described as molten plastic. The soldiers of the Malian Armed Forces eventually took them back to their cells.[1093] One of the seven detainees (identified) died of his injuries a few hours later and another (identified) was never seen alive again.[1094]

675. The next day, the five surviving detainees were taken to the gendarmerie station in Niono, where they were questioned by the gendarmes and taken to hospital for treatment. One of the five detainees (identified), who was seriously injured prior to his transfer to the gendarmerie station, died as a result of his injuries. According to an eyewitness, just before his death, he could no longer sit up and every

[1089] Letter dated 25 March 2020 from the prosecutor of the Specialized Unit addressed to the Minister of Justice and Human Rights and Keeper of the Seals, Table of incidents in Mali that have been the subject of judicial proceedings initiated by the Special judicial unit (entry No. 7).

[1090] Case No. CEI94.

[1091] See case No. CEI32; case No. CEI34; case No. CEI35.

[1092] HRW, Mali: Abuse spreads south, 19 February 2016.

[1093] Testimony No. 286, paras. 1-14; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012-2017, 2017, p. 12.

[1094] Testimony No. 286, paras. 20-23, testimony No. 288, paras. 1- 18 and testimony No. 300, paras. 53-60; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012-2017, 2017, p. 12.

time he drank water, he vomited blood.[1095] The four survivors were eventually transferred to the Special judicial unit. They were placed under committal orders and held at Bamako remand prison, where the visible wounds on their bodies failed to alert or alarm the authorities.[1096] The four men were released four months later without any judicial proceedings being initiated against them.[1097]

676. In conclusion, there are reasonable grounds to believe that, on 7 April 2016, soldiers of the Malian Armed Forces from the Diabali military camp ill-treated and tortured seven Fulani men. Two of them died and a third disappeared. At the time of the incident, the Diabali military camp was under the command of a colonel of the Malian Armed Forces (identified), whose name is contained in a confidential annex to this report.

677. The Human Rights and Protection Division of MINUSMA publicly denounced the incident in 2018.[1098] However, no action was taken by the Malian judicial authorities to identify and try the alleged perpetrators of the ill-treatment.[1099] A local expert explained to the Commission that victims of abuses committed by soldiers of the Malian Armed Forces and their families do not file complaints with the gendarmerie or the prosecutor. According to him, “if you want to file a complaint, you have to make sure that you are protected”. He added that “the gendarmerie and the prosecutor cannot do anything because the Army is too powerful compared with the justice system and the police”.[1100] A judicial source confirmed to the Commission that it was common for members of the Malian Armed Forces to commit violence during military operations. The source added that, whenever a potential case of violence committed by soldiers was registered, the gendarmes were asked to have a medical certificate drawn up to record the violence. The medical certificate was then placed in the file of those arrested and transmitted to the Special judicial unit upon their transfer.[1101]

iv. 11 to 18 February 2017 - Execution of a shopkeeper from the Bambara community, which led to a cycle of reprisals between the Bambara and Fulani communities of Macina cercle[1102]

678. The execution of a shopkeeper from the Bambara community in the village of Diawaribougou on 11 February 2017 by two armed individuals set off a cycle of violence in Macina cercle, with the

[1095] Testimony No. 286, paras. 20-23, testimony No. 288, paras 1-18 and testimony No. 300, paras. 53-60; HRW, Mali conflict and aftermath: compendium of Human Rights Watch reporting, 2012-2017, 2017, p. 12.

[1096] Testimony No. 286, paras. 29-32 and testimony No. 288, para. 14.

[1097] Testimony No. 286, paras. 29-32.

[1098] Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017) (French), February 2018, para. 33.

[1099] The Commission asked the Government of Mali about existing judicial proceedings involving soldiers of the Malian Armed Forces but had not received a response by the date of submission of the present report. Note verbale dated 12 March 2020 addressed to the Minister of Justice and Keeper of the Seals of the Republic of Mali; Note verbale dated 21 May 2020 from the Commission addressed to the Minister of Justice.

[1100] Testimony No. 300, paras. 53-60.

[1101] Testimony No. 289.

[1102] Case No. CEI95.

civilian population being the primary victim. In addition to the execution of the shopkeeper, the Commission chose to document two other incidents that occurred during that cycle of violence.[1103]

11 February 2017 - Execution of a shopkeeper from the Bambara community in the village of Diawaribougou by two armed men on motorcycles

679. On 11 February 2017, in the village of Diawaribougou, approximately 10 km from the commune of Macina in Macina cercle, two (identified) individuals shot and killed a 50-year-old Bambara shopkeeper (identified). The two assailants were identified by two witnesses as they fled by motorcycle. They were allegedly two Fulani men from the village who knew the shopkeeper. The shopkeeper had reportedly been threatened by the two individuals some time earlier and had complained to the gendarmerie.

680. The Commission's interlocutors reported different motives for the execution**.** Some maintained that he was killed because of his collaboration with the Malian authorities and the Malian Armed Forces. Others said that he was killed for his public criticism of the Macina katiba. Either of those motives would suggest that the two assailants had links with the Macina katiba. An affiliation to or at least connection with the Macina katiba on the part of the assailants is plausible in view of the modus operandi (targeted execution by two men on motorcycles who had previously made threats) and the context (the Macina katiba was the extremist armed group operating in the area at the time).[1104]

12 February 2017 - Attack against Fulani inhabitants of several hamlets in the villages of Diawaribougou, Niona Peuhl and Toguéré Wéré

681. On the morning of 12 February 2017, the shopkeeper who had been executed the previous day was buried in his village, Diawaribougou. Many traditional hunters (dozos) from the Bambara community living in the surrounding villages gathered in Diawaribougou to attend the burial. Immediately after the funeral service, the traditional Bambara hunters discussed the matter and agreed to avenge the shopkeeper's execution.[1105]

[1103] In addition to the three incidents documented by the Commission, the commission of inquiry on the events in Macina established by the Ministry of Justice in March 2017 reported at least three other subsequent incidents that may be linked to that cycle of violence but which have not been independently verified by the Commission: (1) the execution of four Fulani cattle herders displaced from Macina to Bogga Danawal in the commune of Diabali (Niono cercle) by unidentified traditional hunters on 21 March 2017; (2) a clash on 22 March 2017 between traditional hunters and unidentified armed men in the Bari Coro forest, Dogofry sector (Niono cercle), during which 10 traditional hunters were reportedly killed and 14 others wounded; and (3) the attack on a vehicle in which merchants were travelling by unidentified armed men on 27 March 2017, between Soumouni and Séné Bambara, in the commune of Macina, in which one person died and two others were injured; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017; See also report of the Secretary-General on the situation in Mali (S/2017/271*), 30 March 2017, para. 28.

[1104] Confidential report of HRPD, MINUSMA, pp. 7-8; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017; Confidential medical document; Testimonies Nos. 276, 299 and 302; See also testimonies Nos. 271 and 550; FIDH-AMDH, Mali: Terrorism and impunity jeopardize the fragile peace agreement, May 2017, p. 9; HRW, Press release, Mali: Spate of killings by armed groups. Investigate abuses, protect vulnerable civilians, 5 April 2017; Report of the Secretary-General on the situation in Mali (S/2017/271*), 30 March 2017, para. 28.

[1105] Confidential report of HRPD, MINUSMA, pp. 8-10; Testimony No. 299, para. 40; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017.

682. Several simultaneous attacks were then carried out against Fulani inhabitants of six hamlets in the villages of Diawaribougou, Niona Peuhl and Toguéré Wéré, in the commune of Macina. According to the investigation conducted by the Human Rights and Protection Division of MINUSMA shortly after the events, several witnesses saw traditional Bambara hunters, armed with shotguns, riding on a dozen or so motorcycles that day in the vicinity of Diawaribougou. The attackers split up and made their way simultaneously to several hamlets. They set fire to the houses and fired point blank at the members of the Fulani community living there. The hamlets were reportedly selected by the hunters because of rumours that their inhabitants were collaborating with extremist armed groups. Despite the public clamour, the Commission received no evidence that the inhabitants of the hamlets were collaborating with extremist armed groups. In its fact-finding mission, the Human Rights and Protection Division of MINUSMA noted that, during the attacks on the hamlets, there was no resistance, the traditional hunters did not suffer any injuries, and no weapons were found in the hamlets.[1106]

683. According to a medical source corroborated by all the information collected by the Commission, at least 20 people were killed in the attack of 12 February 2017, including 18 Fulani men aged between 23 and 75 years, an 8-year-old girl and a 15-year-old boy (all but one identified). The 8-year-old girl and a 40-year-old man were burned to death when a hut was set on fire by the assailants. A total of 18 people were injured in the attacks, including 12 Fulani men aged between 19 and 77 years, 2 women, 3 boys aged 4, 8 and 15 years, and 1 girl aged 16 years (all identified). Traditional firearms were used to kill or injure the victims.[1107]

684. During its fact-finding mission undertaken at the time of the events, the Human Rights and Protection Division of MINUSMA collected the names of nine traditional Bambara hunters (dozos) who had participated in the attacks on the hamlets. The commission of inquiry set up by the Government to investigate the events identified 64 individuals allegedly responsible for the attacks.[1108] The Commission was able to confirm the identity of two of the organizers and leaders of the attacks of 12 February 2017, who were local leaders of the brotherhood of traditional hunters of Monimpebougou and Mama Daka. When questioned by the Commission, one of those hunters confirmed his involvement in the events.

18 February 2017 - Execution of nine merchants near the locality of Siraouma, Niono cercle

685. On 18 February 2017, nine men (identified), a minor aged approximately 17 years (identified) and two children estimated to be between 5 and 7 years of age of Bozo and Bambara origin were on their way to the Sunday cattle market in the locality of Niono. On the outskirts of the village of Siraouma, 25 km east of the city of Niono, they were arrested at about 4 p.m. by armed men (unidentified). The assailants were wearing turbans and had a 4x4 vehicle and five motorcycles.[1109]

[1106] Confidential report of HRPD, MINUSMA, pp. 8-10; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017.

[1107] Confidential documents from a medical source. The commission of inquiry set up by the Government also listed a number of victims who suffered material losses in the attack. See Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017.

[1108] Confidential report of HRPD, MINUSMA; Testimony No. 299, paras. 44-49, and testimony No. 550; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017.

[1109] Confidential report of HRPD, MINUSMA, p. 12.

686. The two youngest children were immediately released, while the nine men and the 17-year-old minor had their hands tied behind their backs. From 4 p.m. to 7 p.m., they remained close to the road. The assailants ordered the nine men and the 17-year-old minor to lie on the ground and threatened to kill them. Speaking in broken Bambara with a Fulani accent, they took the victims to task for their supposed support of the traditional hunters. At approximately 7 p.m., the attackers fired at the heads of the nine men and the 17-year-old minor at point blank range. Eight of the men and the 17-year-old minor from the villages of Markala, Tougo and Koutiala died and one man was injured when a bullet hit him in the neck, in the area of his oesophagus.[1110]

Population displacement and school closures as a result of the cycle of violence

687. That cycle of violence led to population displacements within the region in February and March 2017.[1111] Based on figures from the report of a mission conducted jointly by several United Nations system entities from 24 February to 1 March 2017, more than 9,112 persons left the village of Diawaribougou and the hamlets of Niona Peuhl and Toguéré Wéré out of fear of reprisals. Some of them went to the commune of Macina, but the majority (approximately 7,000 people)[1112] took refuge in Niono, their cercle of origin. In addition, about 275 people crossed the Niger River to Diafarabé. Some people also went to the Djenné area.[1113]

688. In the same report, reference was also made to the situation of schools in the areas affected by the violence. The mayor of Macina reported that three schools had been closed, depriving 345 students of education. In the village of Diawaribougou, where the shopkeeper had been murdered on 11 February 2017, all students and teachers were displaced to the locality of Macina.[1114] According to the Human Rights and Protection Division of MINUSMA, a total of 449 students were affected by the school closures throughout the area.[1115]

Judicial process

689. On 2 March 2017, the Minister of Justice and Human Rights established a commission of inquiry into the events that occurred in Macina at the beginning of 2017.[1116] That body, which was composed of 9 law officers and 21 investigating gendarmes and was chaired by the prosecutor of Ségou, was responsible for investigating the incidents that occurred in Macina and Ké-Macina by establishing the facts, gathering testimonies and obtaining the names of the persons involved. In April 2017, the commission of inquiry submitted its report,[1117] in which it recommended that all those involved in the

[1110] Confidential report of HRPD, MINUSMA, p. 12; Testimony No. 271; Confidential document of HRPD, MINUSMA; Ministry of Justice, Report of the commission of inquiry on the events in Macina (French), April 2017; See also HRW, Mali: Spate of killings by armed groups. Investigate abuses, protect vulnerable civilians, 5 April 2017.

[1111] Testimony No. 271, paras. 13–16, and testimony No. 302, para. 19.

[1112] As at 27 February 2017, seven communes in Niono cercle (Djabali, Sokolo, Yèrèdon Saniona, Niono, Namparila, Toridagako et Kala Sigida) had received 6,852 displaced persons from approximately 1,091 households.

[1113] Report of the inter-agency mission conducted from 24 February to 1 March 2017; Confidential report of 23 February 2017 of HRPD, MINUSMA, pp. 12–13.

[1114] Report of the inter-agency mission conducted from 24 February to 1 March 2017; Confidential report of HRPD, MINUSMA, pp. 12–13.

[1115] Confidential report of HRPD, MINUSMA, pp. 12–13.

[1116] Decision No. 2017-045/MJDH-SG of 2 March 2017 establishing a commission of inquiry into the events in Macina.

[1117] Ministry of Justice, Report of the commission of inquiry into the events in Macina, April 2017; Testimony No. 276, paras. 4–6.

crimes be brought to justice. However, since the report was submitted to the Government, no judicial action has been taken, although the alleged perpetrators of many of the acts described above are identified in the report.

6. City of Bamako and region of Koulikoro

i. 20 November 2015 – Attack on the Radisson Blu Hotel in Bamako attributable to Al Mourabitoun[1118]

690. On 20 November 2015, at around 7 a.m., the Radisson Blu Hotel, located in the ACI 2000 neighbourhood of Bamako, was attacked by two individuals (identified) armed with AK-47s and grenades.

691. The attack had been planned several weeks earlier by two members of Al Mourabitoun, a young Malian and a Mauritanian claiming to be Mokhtar Belmokhtar’s chief of operations. The two men, who had been renting a house in Bamako, had been scouting in the vicinity of the hotel for several weeks. The young Malian then allegedly went to Mopti to pick up two AK-47s and two magazines, and then returned to Bamako. The Mauritanian reportedly travelled from Bamako to Tabankort, in the region of Gao, to pick up magazines and offensive grenades to bring back to Bamako. During that visit, he planned the details of the attack with a leader of Al Mourabitoun (identified). On 16 November 2015, the two individuals who carried out the attack itself arrived by bus in Bamako, where the young Malian and the Mauritanian welcomed them and then prepared them for the operation. On 18 November 2015, two days before the attack, the Mauritanian left Bamako for Tabankort. On the morning of 20 November 2015, the young Malian accompanied the two assailants by taxi to the hotel. He then left Bamako for Gao by bus the same day.[1119]

692. On the morning of 20 November 2015, when the two assailants arrived at the hotel, they opened fire on the hotel security guards and then entered the building, firing indiscriminately at staff and guests. They then went up to the floors, where they shot more guests. Elite units of the Malian security forces quickly arrived on the scene and went after the assailants, under the coordination of the head of the National Gendarmerie Intervention Platoon. They located the assailants on the fourth floor. Following an exchange of gunfire between the assailants and the security forces that resulted in the death of one of the gendarmes, the assailants were killed.

693. According to medical sources, the death toll of the attack was 21 (6 Malians including one gendarme from the National Gendarmerie Intervention Platoon, 6 Russians, 3 Chinese, 3 Belgians, 1 Senegalese, 1 American and 1 Israeli). A number of people were also injured, at least three of them seriously. Approximately 140 guests and 30 staff members were in the hotel when the assailants arrived. Some people were evacuated as the security forces entered the hotel and others at the end of the operation.[1120]

[1118] Case No. CEI96.

[1119] Confidential court documents.

[1120] Testimonies Nos. 531 and 519; Confidential diplomatic documents; See also Le Monde, Attentat de Bamako: “nous avons ouvert une porte et ça a défouraillé”, 28 November 2015; Testimony of a Radisson Blu Hotel employee available online at Bamako.com; Report of the Secretary-General on the situation in Mali (S/2015/219), 24 December 2015, para. 22; BBC, Mali hotel attack: Police seek info on hotel attack gunmen, 23 November 2015; AI, Press release, Mali: Armed group’s horrific siege of international hotel shows utter disregard for

694. Al Mourabitoun claimed responsibility for the attack, stating in a communiqué that the perpetrators were Abdelhakim Al-Ansari and Moez Al-Ansari. The use of the name Al-Ansari indicated that the assailants were Malian. On 4 December 2015, the leader of AQIM, Abdelmalek Droukdel (killed in June 2020), also claimed responsibility for the attack on behalf of AQIM, stating that it had been carried out jointly by AQIM and Al Mourabitoun. He also announced that Al Mourabitoun had joined AQIM. On 7 December 2015, Al Mourabitoun published a photo of the assailants, indicating that they were of Fulani origin. During its investigations, the Commission confirmed that the two persons in the photo were indeed the assailants who had been killed in the hotel by the security forces.[1121] In addition, during a forensic firearm examination, it was determined that the weapons used in the attack on the Radisson Blu Hotel were from the same series as those found after the attack on the Byblos Hotel in Sévaré on 7 August 2015, for which Al Mourabitoun also claimed responsibility.[1122]

695. In conclusion, there are reasonable grounds to believe that, on 20 November 2015, two assailants (identified) attacked the Radisson Blu Hotel in Bamako, killing 20 people who were in the hotel at the time of the attack and one gendarme from the National Gendarmerie Intervention Platoon, and were then killed by the defence and security forces. The attack was planned and organized by three members of Al Mourabitoun (identified). An investigation was opened by the Special judicial unit immediately after the events. When asked about the status of the proceedings, the Unit indicated that a forwarding order had been issued on 20 December 2019 against the young Malian and the Mauritanian mentioned above.[1123] A trial date had not yet been set at the time of submission of the present report.

ii. 18 June 2017 – Attack on the Campement Kangaba Hotel on the outskirts of Bamako attributable to JNIM[1124]

696. On Sunday, 18 June 2017, at approximately 3.30 p.m., at least three individuals armed with AK-47s attacked the Campement Kangaba Hotel on the outskirts of Bamako. The assailants entered the

human life, 20 November 2015; Malijet, Prise d'otages de l'hôtel Radisson Blu: les chiffres définitifs du ministère de la sécurité: 21 morts dont 18 clients, un gendarme malien et deux terroristes, 21 November 2015; MINUSMA, Press release of 21 November 2015.

1121 Testimony No. 519; Confidential court documents; France 24, Mali: Trois jours de deuil après l'attaque du Radisson doublement revendiquée, 23 November 2015; RFI, Mali: une seconde revendication de l'attaque de l'hôtel Radisson, 23 November 2015; France 24, Video entitled "Le groupe Al-Mourabitoun, affilié à Al-Qaeda, revendique la prise d'otages à Bamako", 20 November 2015; RFI, L'Emir d'AQMI annonce le ralliement de Mokthar Belmokthar, 4 December 2015. The photo of the assailants published by Al Mourabitoun can be found on Twitter. The audio recording of the statement of responsibility is available online at aljazeera.net. See also confidential document of MINUSMA. On 23 November 2015, the Macina katiba also claimed responsibility for the attack on the hotel, stating that it had carried it out with the support of Ansar Eddine. While it seems to be established that the attack was planned and carried out by Al Mourabitoun, the statement of the Macina katiba can be explained by the fact that one of the two assailants had claimed to be a member of that katiba. The Macina katiba stated that, contrary to the evidence in the Commission's possession, five men had taken part in the attack, two of whom had been killed, and the other three of whom had escaped. France 24, Mali: Trois jours de deuil après l'attaque du Radisson doublement revendiquée, 23 November 2015; RFI, Mali: une seconde revendication de l'attaque de l'hôtel Radisson, 23 November 2015; See also confidential diplomatic document.

1122 Confidential document of MINUSMA. See also case No. CEI84.

1123 Response dated 17 February 2020 from the Malian judicial authorities to the Commission's request of 6 December 2019. The charges brought at that stage were acts of terrorism, financing of acts of terrorism, criminal conspiracy, murder, violence and assault and damage to the movable and immovable property of others.

1124 Case No. CEI97.

hotel in two groups through the main entrance and from the top of the resort, around the pool area. They then opened fire on the hotel guests, sparing the Malian staff. An hour later, the Malian counter-terrorist special force arrived on the scene and launched an attack through the main entrance to the hotel complex. Members of the National Police, the Malian Armed Forces and the MINUSMA and EUTM forces were also on hand to assist the special forces outside the hotel.

697. Five people were killed in the attack: a Franco-Gabonese man, a 24-year-old Chinese man, a 39-year-old Malian woman, a 42-year-old EUTM member of Portuguese nationality and a member of the National Guard. Several members of the defence and security forces and civilians were injured. Three assailants (unidentified) were killed during the intervention by the Malian special forces. Two of the assailants were killed after an exchange of fire with the security forces. The following day, the body of the third assailant was found in the vast hotel complex, next to an AK-47 and a bag containing ammunition.[1125]

698. JNIM, which was led by Iyad Ag Ghaly, claimed responsibility for the attack on 19 June 2017, stating that the three assailants (Salman, Hamza and Abu Bessir) were of Fulani origin and that all three had been killed during the attack by the Malian special forces. That information was confirmed by the Commission during its investigations.[1126]

699. In conclusion, there are reasonable grounds to believe that, on 18 June 2017, three members of JNIM attacked the Campement Kangaba Hotel on the outskirts of Bamako. At least four people were shot and killed in the attack (the fifth victim died of a heart attack). The Special judicial unit opened an investigation immediately after the incident. When asked about the status of the investigation, the Special judicial unit informed the Commission that it was under way and that the most recent investigative measures had been carried out in May and July 2019.[1127]

iii. 17 August 2016 – Violent demonstration in Bamako repressed with disproportionate force by the defence and security forces[1128]

700. On 15 August 2016, the blogger and radio commentator Mohamed Youssouf Bathily, known as “Ras Bath”, was arrested and prosecuted by judicial authorities for indecent assault, insulting public officials and inciting the armed forces to disobedience. On 17 August 2016, when he was scheduled to appear before the Regional Court of Bamako, commune No. IV, a demonstration in support of him was

[1125] Confidential documents of UNPOL and EUTM; Confidential diplomatic document; Testimonies Nos. 519 and 531; Photos of the weapons used by the assailants; See also the interview with the Minister of Security and Civil Defence following the emergency meeting convened by the Prime Minister, available online at aBamako.com; AI Report 2017/18: The State of the world's human rights; AI, Violations and abuses as instability spreads, June 2017.

[1126] According to information obtained by the Mauritanian news agency Alakhbar from “a knowledgeable source within the organization”, the attack was carried out by the Tariq bin Ziyad katiba of AQIM. See Alakhbar, Mali: Nursat Al-Islam revendique l’attaque de Kanagaba près de Bamako, 19 June 2017 ; See also SITE Intelligence group, Al-Qaeda’s Mali Affiliate Claims Credit for Kangaba Tourist Resort Attack, 19 June 2017.

[1127] Response dated 17 February 2020 from the Malian judicial authorities to the Commission’s request of 6 December 2019. See also the interview on ORTM with Prosecutor Boubacar Sidiki Samaké.

[1128] Case No. CEI98.

held in front of the courthouse. People who were dissatisfied about other issues, such as the management of the peace process and the socioeconomic situation, also took part in the demonstration.[1129]

701. According to a detailed investigation conducted by the Human Rights and Protection Division of MINUSMA at the time of the events, which was verified by the Commission, the demonstration, which drew a crowd of between 1,000 and 2,000 people, was violently repressed by the security forces. The violence, which took place within a three-kilometre radius of the courthouse, began at around 10 a.m. and ended at around 2 p.m..[1130] At around 10 a.m., demonstrators attempted to enter the courthouse and threw Molotov cocktails into the courthouse compound. Police officers stationed in the compound fired tear gas at the demonstrators but the demonstrators still managed to enter the courthouse. One demonstrator (an identified man) was wounded in the throat by the barbed wire securing the courthouse compound and died of bleeding. The demonstrators ransacked the courthouse and then set fire to multiple offices and to four vehicles.[1131]

702. After the courthouse was ransacked, the defence and security forces opened fire with live ammunition in the street adjacent to the courthouse, injuring at least four men in the knee, thigh, or chest. In the area north-west of the courthouse, police officers of the Mobile Security Unit chased demonstrators and took up positions to shoot them. One officer fired live ammunition at a man as he was fleeing, wounding him in the leg. Shortly thereafter, two journalists from Radio France International were hit by a tear gas grenade thrown by an individual after he had gotten out of a pickup truck of the National Guard. Although the journalists identified themselves, the same individual threw a second tear gas grenade at them. A few seconds later, another individual, who was wearing a blue uniform, got out of the pickup truck and fired live ammunition at the two journalists, who managed to hide behind a kiosk and did not get hurt.[1132]

703. When questioned by the Commission about those incidents, the regional director of the Bamako district police explained that the two journalists had confused the tear-gas grenade launcher with an automatic weapon and that they had acknowledged their mistake after the events. He also stated that the law enforcement officers who had been under his command that day had only law enforcement equipment (grenade launchers, tear gas (rifle and hand), shields, helmets and shin guards), and that none of them had been equipped with or had used firearms. He added that any live ammunition fired could only have come from demonstrators and not from law enforcement officers. However, he speculated that the gendarmes responsible for routine security maintenance at the courthouse might have been armed. The Commission is not convinced by those explanations. Based on the very solid evidence collected by the Human Rights and Protection Division and confirmed during the Commission's investigations, it was not established that the demonstrators were armed.[1133] Furthermore, the use of

[1129]Ras Bath was released and placed under judicial supervision on the evening of 18 August 2016. On 26 July 2017, he was sentenced in absentia to one year in prison and to a fine of CFAF 100,000. The Court of Appeal of Bamako acquitted him on appeal on 27 November 2017. AI, Violations and abuses as instability spreads, 2017; Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 10–12. Confidential document of HRPD, MINUSMA; Document of UNPOL; Confidential diplomatic document.

[1130]Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, p. 6 (paragraph missing) and para. 8.

[1131]Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 19–22; Confidential document of HRPD, MINUSMA; Testimony No. 530; Confidential diplomatic document.

[1132]Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 58–59, 62–64; Confidential documents of HRPD, MINUSMA.

[1133]Testimony No. 530; Confidential document of HRPD, MINUSMA.

firearms by the defence and security forces was confirmed by a number of witnesses who were present at the scene and by the testimonies of persons who had been shot and injured.[1134]

704. It was also reported that, on several occasions, the security forces deliberately threw tear gas into private residences while the occupants were inside. For example, in the area south-east of the courthouse, a female police officer in a vehicle of the Anti-Crime Brigade threw a tear gas canister into a tailoring shop, setting it on fire. Three people inside the shop managed to get out at the last minute. In another instance, approximately 10 police officers in three police vehicles with "14th" marked on the side burst into a tailoring shop, threw two tear gas canisters inside and left, closing the doors behind them. The shop caught fire while 16 tailors were inside. They tried to get out through the only window, as the door was blocked by the police. On the other side of the window, police officers had positioned themselves to beat the tailors as they left the shop.[1135] Shortly thereafter, police officers in two pickup trucks entered a private residence where 15 people from the same family, including about 10 children, were living. The officers threw about ten tear gas grenades into the compound and tried to set the house on fire, but failed to do so.[1136] Residents were also violently beaten by police officers. For example, after trying to take refuge in a house, a man was violently beaten by police officers with truncheons to the point of unconsciousness.[1137]

705. When questioned about those events, the regional director of the Bamako district police confirmed that police officers were not supposed to throw tear gas grenades inside private homes. He added that the demonstration was marked by violence on the side of the demonstrators and that the police officers feared for their lives. Therefore, according to him, police officers may not have strictly followed the rules for the use of tear gas.[1138]

706. At least 19 people were arrested by the police in connection with the demonstration. All of the arrested persons who testified before the Commission described the violence that they had suffered while being transferred from the site of the demonstration to the fifth police precinct or while in detention at that precinct. For example, one man was beaten in the head with a truncheon while being transported from the site of the demonstration to the precinct. In another instance, a police officer inserted the barrel of his tear-gas rifle into the trousers of a man who had just been arrested, threatening to shoot him, and then hit him in the genitals with the butt of the rifle. The same man was beaten and whipped by two officers from the fifth police precinct.[1139] On 18 August 2016, the 19 detainees were placed in pretrial detention and transferred to the Bamako remand prison. They were all released following a trial.[1140] The regional director of the Bamako district police confirmed that arrests had been

[1134] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 23–27; 50, 52; Confidential documents of HRPD, MINUSMA.

[1135] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 30–33, 35; Confidential documents of HRPD, MINUSMA. For information on other similar incidents during the repression of the demonstration, see the confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 46-49; Confidential document of HRPD, MINUSMA.

[1136] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 36–44; Confidential document of HRPD, MINUSMA.

[1137] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 36–44; Confidential document of HRPD, MINUSMA.

[1138] Testimony No. 530.

[1139] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 67–68; Confidential documents of HRPD, MINUSMA.

[1140] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 71–72; Confidential document of HRPD, MINUSMA.

made and recalled that the demonstration had not been authorized. He indicated that he had received no complaints about any acts of ill-treatment against the persons arrested that day.[1141]

707. According to official information provided by the Government of Mali, the demonstration resulted in the death of 1 person and in the injury of 18 others, including 14 civilians and 4 police officers, and in significant material damage.[1142] The Human Rights and Protection Division of MINUSMA reported that 35 civilians, including 3 children, were injured.[1143]

708. Officers from the fifth, ninth and fourteenth police precincts of Bamako, from the Anti-Crime Brigade, from the Mobile Security Unit and from the National Guard took part in the repression of the demonstration. The regional director of the Bamako district police, a police colonel (identified), confirmed that he had been in charge of the operations that day. He indicated that he had not been present at the scene of the demonstration but that he had directed the operations from his office by radio. On the ground, the operations were coordinated by the head of the fifth police precinct (identified).[1144]

709. In conclusion, there are reasonable grounds to believe that, notwithstanding the violence of the demonstration that took place on 17 August 2016 at the Regional Court of Bamako, commune No. IV, the security forces clearly used disproportionate force in firing live ammunition at the unarmed crowd. The security forces also inappropriately used tear gas against local residents. In addition, there are reasonable grounds to believe that the arrested and detained persons were ill-treated at the fifth police precinct. The day after the demonstration, the Secretary-General of the Ministry of Justice announced the opening of an administrative and judicial investigation. According to the information in the Commission's possession, no action has been taken since that announcement.[1145]

iv. June 2015–January 2018 – Illegal detentions and detention conditions at the Directorate-General for State Security[1146]

710. Since the outbreak of the crisis in 2012, many people have been held by the State intelligence services (DGSE) outside the judicial process. Although in the present section the Commission focuses on the 2015–2018 period, it is well aware that it received reports of cases of detention at DGSE covering

[1141] Testimony No. 530.

[1142] Document of UNPOL; Testimony No. 530.

[1143] Confidential documents of HRPD, MINUSMA; Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, para 76.

[1144] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 3, 18–21, 77–78. Confidential documents of HRPD, MINUSMA; Testimony No. 530.

[1145] Confidential report of HRPD, MINUSMA, on the incidents of 17 August 2016, paras. 18–21 (p. 20); Confidential document of HRPD, MINUSMA; Testimony No. 530; See also document of UNPOL. The Commission asked the Malian authorities whether judicial measures had been taken in relation to the case, but no response had been received as at the date of submission of the present report. Note verbale dated 6 December 2019 addressed to the Attorney General of Bamako and note verbale dated 12 March 2020 addressed to the Ministry of Justice.

[1146] Case No. CEI99.

the entire period of its mandate.[1147] According to information which could not be confirmed, around 100 people are still detained at DGSE.[1148]

711. The Human Rights and Protection Division of MINUSMA documented the cases of 31 detainees held at the DGSE in 2016 and 36 in the first six months of 2017. Data from the Division show that the persons detained at DGSE over the period from mid-2015 to January 2018 were arrested by Malian Armed Forces soldiers in the context of “counter-terrorist” operations, by the French forces of *Operation Barkhane*, or, less frequently, by MINUSMA. Most of the detainees were Tuareg, Arab or Fulani. Some were affiliated with extremist armed groups or with armed groups that signed the Agreement on Peace and Reconciliation in Mali. Periods of detention at DGSE ranged from a few days to several years.[1149]

712. During its investigations, the Commission confirmed that persons arrested in the context of “counter-terrorist” operations in the region of Mopti had been transferred to unknown detention facilities belonging to DGSE in Bamako. For example, 13 Fulani men and 2 Songhai women arrested by the Malian Armed Forces in the commune of Mondoro on 2 May 2017[1150] were detained for between 37 and 46 days in such a facility.

713. In an interview, the two women said that they were held separately from the men under good conditions (a room of about 15 square metres, with a fan, food, water, a mat and a blanket). However, the men were held in a room approximately 2.5 metres wide and 4 metres long, which was barely wide enough to accommodate two men sitting face to face with their legs outstretched and was not deep enough to accommodate more than six men sitting side by side. There were buckets in the room for hygienic purposes in public view. The room had a fan but had no opening other than a solid metal door, which was always closed. The detainees reported that they were not ill-treated during questioning by men from DGSE. None of the detainees were brought before a judge during their detention at DGSE, which lasted almost a month and a half.

714. The testimonies gathered by the Commission were corroborated by investigations conducted by the organization Human Rights Watch, during which it interviewed 24 individuals who had been held in a detention centre run by DGSE for periods ranging from 27 days to 5 months. According to the organization, all of the men interviewed “said that they [had been] fed regularly, [had] received periodic medical check-ups, and [had] had cells with fans or air conditioning. However, they complained of cramped sleeping conditions, and several said they lacked access to proper hygiene.” [1151]

[1147] The Commission received allegations concerning the following other incidents, which it could not independently verify: 1. arrest of an Arab man in Bamako on 6 August 2012 and his detention at DGSE for 2 months and 13 days, during which he was kept constantly chained in a small, unventilated cell (confidential document of HRPD, MINUSMA); 2. arrest of a mechanic at the end of March 2013 in Tagalate in the region of Gao and his detention at DGSE for 15 days, during which he was subjected to ill-treatment (administration of electric shocks to his genitals and other body parts) (AI, Mali: Agenda for human rights in Mali, November 2013, p. 17). See also report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017) (French), February 2018, para. 41.

[1148] Testimony No. 480.

[1149] Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017) (French), February 2018, paras. 34, 107, 108; Confidential document of HRPD, MINUSMA. See also testimonies Nos. 470 and 479.

[1150] See case No. CEI89.

[1151] Confidential documents of HRPD, MINUSMA; HRW, Mali: Unchecked abuses in military operations, 8 September 2017; Interview with source No. 79.

715. The Commission also documented the cases of two boys aged 14 and 15 (identified), who had been held in DGSE facilities from 25 May until 9 June 2017, when they were handed over to child protection services.[1152]

716. DGSE is not an official place of detention and is not intended to hold persons arrested in connection with conflict. The detention of persons in DGSE facilities is illegal under Malian law. In the absence of visitation and contact rights, families can go for weeks, months and sometimes years without news of their relatives detained at DGSE. Moreover, the National Human Rights Commission (CNDH), which makes regular or unannounced visits to places of detention in order to make recommendations to the Malian Government, does not have access to persons detained by DGSE.[1153] CNDH has nevertheless made several requests to that end to the Office of the President of the Republic. Members of CNDH explained to the Commission that they were not in a position to know how many people were being detained by DGSE, where they were being held or under what conditions.[1154] ICRC and the Human Rights and Protection Division of MINUSMA also do not have access to persons detained by DGSE.[1155]

717. However, DGSE did cooperate with CNDH and the Malian judicial authorities to a certain extent. For example, when asked by CNDH or by the prosecutor of the Special judicial unit about persons who were being sought by their relatives, DGSE informed them whether or not they were holding such persons. According to the testimonies collected by the Commission, the situation has improved since 2017 and several dozen people who were detained at DGSE have been transferred to official places of detention or have been released.[1156]

IX. Thematic analyses

<u>(A) Sexual violence linked to the 2012 conflict</u>

718. The term "conflict-related sexual violence" refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in: (1) the profiles of the perpetrators, who are often affiliated with State or non-State armed groups, including extremist armed groups; (2) the profiles of the victims/survivors, who are frequently actual or perceived members of political, ethnic or religious minority groups or targeted on the basis of their actual or perceived sexual orientation or gender identity; (3) a climate of impunity, which is generally associated with State collapse in a time of conflict; or (4)

[1152] See case No. CEI89; Confidential documents of HRPD, MINUSMA.

[1153] Act No. 2016-036 of 7 July 2016 establishing the National Human Rights Commission (CNDH); Testimony No. 470; CNDH, Annual report on the situation of human rights in Mali in 2018, pp. 20–21.

[1154] Testimonies Nos. 470 and 479; CNDH, Annual report on the situation of human rights in Mali in 2018.

[1155] Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017) (French), February 2018, para. 34; Interviews with sources Nos. 79 and 92; Confidential document of HRPD, MINUSMA.

[1156] HRW, Press release, Mali: Unchecked abuses in military operations, 8 September 2017; CNDH, Annual report on the situation of human rights in Mali in 2018, pp. 20–21. The Commission made a request to meet with the Director of the DGSE, General Moussa Diawara, which was granted. However, due to the COVID-19 pandemic, that meeting could not be held.

the cross-border consequences of a conflict situation, such as displacement or human trafficking, or violations of a ceasefire agreement.[1157]

719. Women and girls in Mali have long lived in a sociocultural context in which they experience inequality and discrimination that are more or less socially accepted and from which it is difficult for them to break free. Gender inequality and discrimination in the social, political, economic and judicial spheres before, during and after conflict situations generally exacerbate sexual violence against women and girls and foster a climate of impunity. The situation in Mali is no exception.[1158] The Commission notes that Mali had a gender inequality index value of 0.676 in 2018, placing it 158th in the ranking of 162 countries.[1159] The status of women thus encourages violence against them. The United Nations Committee on the Elimination of Discrimination against Women has expressed concern that domestic and sexual violence are prevalent, socially legitimate and accompanied by a culture of silence and impunity. The Committee notes that sexual and gender-based violence is underreported, which enhances impunity and promotes the normalization of such violence.[1160] The situation of women and girls in Mali clearly created an environment favourable to the emergence of sexual and gender-based violence directly or indirectly linked to the 2012 conflict. The increased prevalence of sexual and gender-based violence in Mali between 2012 and January 2018, and its far-reaching and enduring consequences, was rooted in the position of women in Malian society.

720. In accordance with its mandate, the Commission paid particular attention to attacks against women and girls, the consequences of those attacks and the situation regarding the rights of women and girls since 2012 in the context of the conflict. Its focus was on conflict-related sexual violence against women and girls. Its investigations showed that women and girls were subjected to sexual violence during the crisis, most of which was directly linked to the conflict. The types of violations, abuses and crimes committed against women and girls varied widely during and after the period in 2012 and early 2013 when armed groups controlled northern Mali, and there were a variety of perpetrators. The documentation collected by the Commission enabled it to analyse the mechanisms of the phenomenon but not to determine the precise number of acts of violence committed against women and girls during its temporal mandate. Such violence was significantly underreported owing to the insecurity prevalent in Mali since 2012, the stigmatization and cultural ostracism faced by survivors of sexual violence and the continued presence of many armed groups in northern and central Mali.[1161]

721. The findings of this section of the report are based on 77 interviews with surviving victims, family members of survivors, eyewitnesses, and expert sources and witnesses. In some cases, the Commission also based its findings on documents and information provided by the Human Rights and Protection Division of MINUSMA, government institutions, national and international organizations, civil society and other actors working on the issue of sexual violence in Mali. The Commission made a particular effort to abide by the principle of "do no harm" by refraining from reinterviewing survivors

[1157] Report of the Secretary-General on conflict-related sexual violence (S/2019/280), 29 March 2016, para. 4.

[1158] Mali - Demographic and Health Survey (EDSM-V) (French), 2012–2013, p. 273; Institut Malien de Recherche Action pour la Paix (IMRAP), Bamako - Autoportrait du Mali sur les Obstacles à la Paix, March 2015, p. 34.

[1159] UNDP Gender Inequality Index (2018).

[1160] Report of the Committee on the Elimination of Discrimination against Women on its sixty-fourth session, held from 4 to 22 July 2016 (A/72/38).

[1161] Report of the Committee on the Elimination of Discrimination against Women on its sixty-fourth session, held from 4 to 22 July 2016 (A/72/38).

who had already been interviewed by other organizations using a methodology that the Commission, after careful examination, considered to be comparable to its own.

1. Findings of the Commission

722. The nature of sexual violence varies considerably, depending on the conflict and the armed organizations involved (State armed forces and non-State armed groups).[1162] Armed organizations may engage in rape and sexual violence as a practice and as a strategy. Sexual violence is considered to be a practice when it is not ordered (even implicitly) by commanders, but is tolerated by them. In such cases, it serves as a means of strengthening cohesion among fighters within a group. This is particularly true of gang rape.[1163] Commanders may also use sexual violence as a strategy of war, as in the case of rape as a form of sexual torture of political prisoners, the public rape of members of other groups or organizations, rape as a form of collective punishment and rape used as a signal of the organization’s resolve. In some contexts, rape can be used as a form of compensation or reward for fighters. In others, it is used to humiliate enemies, or to cause terror or inflict punishment with a view to controlling the population.[1164]

i. Sexual violence during the period when armed groups controlled the northern regions of Mali

723. The conflict-related sexual violence committed between January 2012 and June 2013 occurred primarily in the northern regions of Mali (Timbuktu, Gao (including Ménaka) and Kidal); parts of the Mopti region that MNLA considered to be part of “Azawad”, such as Douentza cercle; and the localities of Konna (Mopti cercle) and Diabali (Ségou region), when they were attacked by extremist armed groups in January 2013. The amount of sexual violence committed by armed men in those regions was considerable. The United Nations recorded 211 instances of such violence in northern Mali in 2012, noting that the majority of affected women and girls refused to report such violence out of fear of reprisals or of being rejected by their partners and communities.[1165] A medical source who was based in Gao from April to December 2012 told the Commission that she had recorded approximately 30

[1162] In some conflicts, only women and girls are targeted, while in others, men and boys are targeted as well. Some organizations target particular groups within the population, while others do not appear to follow any such criteria. In some conflict situations, there are markedly fewer acts of sexual violence committed by members of armed organizations than acts of sexual violence not directly related to the conflict, such as those perpetrated by intimate partners, acquaintances or strangers. See for example International Review of the Red Cross, Elisabeth Jean Wood, Conflict-related sexual violence and the policy implications of recent research, 2014, pp. 457–478; Lindsay Stark and Alastair Ager, A Systematic Review of Prevalence Studies of Gender-Based Violence in Complex Emergencies, Trauma, Violence and Abuse, 2011, pp. 127–134; Mazeda Hossain et al., Men’s and Women’s Experience of Violence and Traumatic Events in Rural Cote d’Ivoire Before, During and After a Period of Armed Conflict, BMJ Open, Vol. 4, No. 2, 2014.

[1163] Dara Kay Cohen, Explaining Rape during Civil War: Cross-National Evidence (1980–2009), Female Combatants and Violence in Armed Groups: Women and Wartime Rape in Sierra Leone, World Politics , Vol. 65, 2013, pp. 383–415.

[1164] International Review of the Red Cross, Elisabeth Jean Wood, Conflict-related sexual violence and the policy implications of recent research, 2014, p. 472; Xabier Agirre Aranburu, Beyond Dogma and Taboo: Criteria for the Effective Investigation of Sexual Violence, in Morten Bergsmo, Alf Butenschon Skre and Elisabeth Jean Wood (eds), Understanding and Proving International Sex Crimes, Torkel Opsahl Academic Epublisher, Oslo, 2012, pp. 267–294.

[1165] Report of the Secretary-General on sexual violence in conflict, (A/67/792–S/2013/149), 14 March 2013, para. 51; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, paras. 31–35.

instances of sexual violence, and that 60-year-old women had been among the victims.[1166] The armed groups active in northern Mali in 2012 and early 2013 were MNLA, composed primarily of Tuaregs, and extremist armed groups, namely Ansar Eddine, MUJAO and AQIM, which comprised foreign fighters and local fighters from the above-mentioned regions.[1167]

(a) MNLA

724. MNLA was in Gao, together with MUJAO, from April to late June 2012. It also had control, for varying lengths of time, over the cities of Ménaka (until November 2012, and then again in 2013), Kidal (from April 2012 to an unknown date that same year, and then from late January 2013) and Douentza, in the Mopti region (from April to late June 2012, at least). It also had a presence in the cercles of Goundam, Diré and Niafunké in the region of Timbuktu in 2012. On 6 April 2012, MNLA declared the independence of "Azawad", an area encompassing the three northern regions of Mali (Kidal, Gao and Timbuktu) and the northernmost parts of the regions of Mopti and Ségou.

725. During the time when MNLA had a presence in or controlled those areas, women and girls (from 13 to 60) were raped and gang raped, either after being abducted or in their homes, by armed men, some of whom were identified by the victims as belonging to MNLA. Those incidents took place particularly in Gao, Timbuktu and Ménaka. In May 2013, the hospital in Mopti reportedly treated victims of 10 rapes in Ménaka that medical sources attributed to MNLA. The Human Rights and Protection Division of MINUSMA documented a case in In Khalil, in the region of Kidal, in which three women from the Arab community were apparently raped a number of times by several men from MNLA. The Commission notes that the majority of victims in Kidal, Gao and Ménaka were Songhai or Bella Tuareg women and girls.[1168]

726. There are reasonable grounds to believe that at least some of the reported rapes are attributable to MNLA members or to armed men who had demonstrated sufficient support for the group that they were able to carry weapons and operate freely in areas under the group's control. The information gathered suggests that members of MNLA engaged in the individual and gang rape of women and girls as a practice. In the opinion of the Commission, some fighters might have viewed those rapes as a reward for taking control of certain regions and as a means of strengthening cohesion among fighters. They might also have used them to intimidate women and girls. The evidence at the Commission's disposal does not lead to the conclusion that the documented incidents of sexual violence were ordered by the MNLA authorities. However, commanders must have tolerated the violence; it is difficult to imagine that they were unaware of it, since they were on the ground and were informed of at least one of the incidents.

[1166] Testimony No. 512; Interviews with sources Nos. 96, 46 and 48; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, paras. 43–45; Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, para. 59.

[1167] See the section entitled "Main actors in the 2012 Malian crisis".

[1168] See cases Nos. CEI07, CEI18, CEI19, CEI21, CEI30, CEI51 and CEI46. Testimonies Nos. 309 and 201; Interview with source No. 103; Confidential documents of HRPD, MINUSMA; Report of the Secretary-General on sexual violence in conflict, (A/67/792–S/2013/149), 14 March 2013, paras. 52-54; FIDH-AMDH, War Crimes in North Mali, December 2012, pp. 14–15; AI, Preliminary findings of a four-week mission, 7 June 2013, pp. 23-24.

727. The MNLA members interviewed by the Commission denied all allegations that sexual violence had been committed by MNLA members in the above-mentioned regions. They stated that they had received no complaints concerning sexual violence from community leaders, imams, chiefs, women's groups or even individuals during the time when they controlled those regions. They claimed that the allegations were propaganda designed to cast MNLA in a negative light. Even certain members who admitted that sexual violence might have been committed during that time did not consider MNLA to be responsible for it.[1169]

728. The Commission notes that since 2013, MNLA has been included in the list of parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.[1170]

(b) Extremist armed groups (Ansar Eddine, AQIM and MUJAO)

729. The Commission established that conflict-related sexual violence was committed against women and girls by armed men identified by survivors as belonging to Ansar Eddine, AQIM and MUJAO in Gao, Timbuktu and Ménaka between 2012 and January 2013, and in the localities of Konna and Diabali during the attacks of January 2013. Those groups engaged in various forms of sexual violence, including rape (individual or gang rape), sexual torture, sexual slavery and forced marriage, to varying degrees. They made extensive use of sexual violence in the form of forced marriage as a means of punishing and controlling the population. In the opinion of the Commission, those groups sometimes also used rape as a form of compensation and to strengthen cohesion among fighters. The Commission also finds that forced marriage and gang rape were used as strategies of war, on the basis of evidence indicating that the groups used such acts of violence as tools in pursuit of their objectives, namely gaining control of the northern regions of Mali and imposing their interpretation of Islamic law.[1171] The victims were primarily women and girls from the local communities, mostly Songhais and Bella Tuaregs. The Commission also notes that sexual violence committed by the groups was regularly accompanied by persecutory and derogatory behaviour, such as the use of insults and beatings.[1172]

MUJAO

730. The city of Gao was controlled by MUJAO and MNLA from April to June 2012. MUJAO had full control of the city from the end of June 2012 to January 2013. In June 2012, MUJAO imposed its

[1169] Testimonies Nos. 549 and 536.

[1170] Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda; Report of the Secretary-General on children and armed conflict, A/67/845*–S/2013/245*, 15 May 2013; Report of the Secretary-General on sexual violence in conflict (S/2019/280), 29 March 2019, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.

[1171] Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; Interview with sources Nos. 96, 46 48 and 63; Confidential document of HRPD, MINUSMA; See also ICC, Decision on the confirmation of charges against Al Hassan, 13 November 2019, paras. 82, 555, 564–582, 584–627 and 632–637.

[1172] Testimonies Nos. 201, 189, 190, 139, 164, 308; 309; 176, 187, 178, 179, 197; 177/138, 182, 311, 257, 199 and 149; Confidential document of HRPD, MINUSMA.

interpretation of Islamic law in Gao, with a view to controlling the region and its inhabitants. Members of MUJAO committed sexual violence throughout the time they controlled the city. In the opinion of the Commission, members of MUJAO engaged in individual and gang rape as a practice. Commanders must have been aware that women and girls were being raped in places that were being used as prisons, and they tolerated it. The Commission considers that gang rape was used, inter alia, to strengthen cohesion among fighters. Fighters also systematically used sexual violence to punish, intimidate and control the population. In that connection, the Commission notes that many members of MUJAO were residents of Gao who joined the group as a result of a combination of circumstances.[1173]

731. The Commission interviewed several victims who stated that they had been raped, in some cases gang raped, in Gao, either at the Islamic police station or at the town hall, which was being used as a prison. Most of the victims were abducted from their homes and taken to those locations, which were occupied by MUJAO at the time. The Commission has identified the person who was the head of the Islamic police in Gao at that time, and his name is included in a confidential annex to this report.[1174]

732. The Commission also gathered information on forced marriages arranged by members of MUJAO in Gao. One witness described the following scenario to the Commission: a group of men from MUJAO would bring money as a dowry for a girl, and then one of them would "marry" her. When the girl arrived at the supposed residence of her "husband", she would be raped by all the men who had contributed to the dowry and, after a few days, sent home.[1175] The Commission notes that since 2013, MUJAO has been included in the list of parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.[1176]

Ansar Eddine and AQIM

733. From April 2012 to January 2013, the city of Timbuktu was controlled by Ansar Eddine and AQIM, under the direct leadership of Iyad Ag Ghaly, Abou Zeïd and Djamel Okacha. Ansar Eddine and AQIM imposed their interpretation of Islamic law in Timbuktu.[1177] The Commission collected reliable information and testimonies concerning forced marriages conducted by Ansar Eddine and AQIM in the city. A number of survivors, whose ages ranged from 15 to 39, stated that they had been forced to marry members of those armed groups. Some witnesses were able to identify certain

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[1173] See case No. CEI18. See also Simon-Skjodt Center, Regions at risk: Preventing mass atrocities in Mali, April 2018, p. 21; SIPRI, The impact of armed groups on the populations of central and northern Mali, October 2019, p. 12; Institute for Security Studies, Mali's young 'jihadists': Fuelled by faith or circumstance? August 2016.

[1174] Testimonies Nos. 179, 178, 176, 139, 189, 187, 197 and 546; Confidential document of HRPD, MINUSMA; Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune III on 12 November 2014 and 6 March 2015.

[1175] Testimony No. 544.

[1176] Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda; Report of the Secretary-General on children and armed conflict, A/67/845*–S/2013/245*, 15 May 2013; Report of the Secretary-General on sexual violence in conflict (S/2019/280), 29 March 2019, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.

[1177] ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15, judgment and sentence, 27 September 2016, paras. 31–39.

commanders of those groups, whose names are included in an annex to this report, as the individuals who entered into, authorized or performed the marriages.[1178]

734. Most of the families of the survivors had been forced, on pain of death, to give their daughters or wives in marriage. In many cases, the girl or woman did not know who she was marrying, as the men came in a group. According to the women and girls, most of them, once married, were taken to houses where the men lived, locked in rooms with other women and raped repeatedly by several men. They were regularly beaten and raped, not only by their supposed husbands but also by other men. They were also forced to do housework, cook and do laundry. Survivors spoke of being held for between 2 weeks and 6 months, during which time they were repeatedly raped and subjected to mental and physical abuse. The Commission notes that most of the women experienced serious physical and psychological trauma, and that one of the tangible consequences of the acts of rape is that many of them became pregnant.[1179]

735. Women were also subjected to sexual violence as a result of the application of Islamic law as interpreted by Ansar Eddine and AQIM. A number of women and girls were raped or gang raped as a form of punishment. Women who were deemed to be dressed incorrectly were beaten on the spot or arrested and taken to BMS, where they were beaten and repeatedly raped. The names of some of the rapists, who were identified by the victims, are given in a confidential annex to the present report.[1180] With regard to the regions of Mopti and Ségou, women were raped in their homes during the attacks by Ansar Eddine, AQIM and MUJAO on the localities of Diabali and Konna in January 2013.[1181]

736. The Commission notes that since 2013, Ansar Eddine and AQIM have been included in the list of parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda,[1182]

ii. Sexual violence linked to the conflict after June 2013 and the retaking of the main cities of northern Mali

[1178] Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune III on 12 November 2014 and 6 March 2015. See also ICC, Decision on the confirmation of charges against Al Hassan, 13 November 2019, paras. 82, 555, 564–582, 584–627 and 632–637; Interviews with sources Nos. 96, 46 48 and 63.

[1179] See case No. CEI07; Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune III on 12 November 2014 and 6 March 2015; Forensic examination and psychological evaluation conducted by the Commission's forensic doctor.

[1180] See case No. CEI07; Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. IIIon 12 November 2014 and 6 March 2015; See also The Guardian, Women of Timbuktu find their voice again after nightmare of jihadi rule, 25 December 2014.

[1181] See case No. CEI28 and case No. CEI33; Criminal complaints and accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. IIIon 12 November 2014 and 6 March 2015.

[1182] Report of the Secretary-General on sexual violence in conflict (A/67/792–S/2013/149), 14 March 2013, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda; Report of the Secretary-General on children and armed conflict, A/67/845*–S/2013/245*, 15 May 2013; Report of the Secretary-General on sexual violence in conflict (S/2019/280), 29 March 2019, annex: List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda.

737. Following their defeat by the Malian Armed Forces and the French armed forces, the extremist armed groups disintegrated and then regrouped. It is difficult to determine precisely who had effective control over certain areas from 2015, as various groups mutated, merged, emerged and spread into central Mali. The Government controlled only parts of Mopti, Gao, Ménaka and Timbuktu. Kidal was entirely under the control of CMA armed groups.

738. The Commission noted an overall decline in conflict-related sexual violence during this period, most notably in 2015, which was probably due to the signing of the Peace and Reconciliation Agreement and to the fact that certain armed groups began to prevent and punish sexual violence within their ranks, in particular following awareness-raising activities conducted by MINUSMA. The small number of cases reported during that period could also be a consequence of the increased level of insecurity resulting from ongoing tensions between certain armed groups, the establishment of new armed groups, the insufficient presence of the State in most regions, and a lack of government capacity or will to investigate incidents of sexual violence and bring cases before the courts. In the opinion of the Commission, all of those factors could have contributed to the small number of cases reported during the period. The Commission therefore considers that conflict-related sexual violence continued during the period 2014–2018, although the underreporting of cases makes it difficult to determine its extent.

(a) Armed groups that signed the Peace and Reconciliation Agreement

739. While the Commission is aware of the problem of the low number of complaints filed and the under-reporting of cases of sexual violence, it notes that relatively few of the cases of sexual violence documented since the signing of the Peace and Reconciliation Agreement have been attributable to CMA armed groups.[1183] It also notes that CMA armed groups have undertaken several positive initiatives to prevent sexual violence and punish the perpetrators thereof. In September 2014, the Joint Commander in Timbuktu of MAA-CMA and MNLA signed a military directive that called for the elimination of sexual violence against children.[1184] On 5 March 2017, CMA signed an action plan with the Special Representative of the Secretary-General for Children and Armed Conflict to achieve that goal and to prevent acts of sexual violence against children.[1185] On 7 July 2017, CMA also issued a unilateral communiqué on preventing and responding to conflict-related sexual violence endorsed by the movements that compose CMA, including HCUA, MAA-CMA and MNLA.[1186]

740. Within the Plateforme, GATIA is the armed group that has been regularly accused of committing sexual violence since its founding in 2014. Reporting by victims of sexual violence has coincided

[1183] For 2015, MINUSMA investigated 14 cases of alleged sexual violence attributable to MNLA in the regions of Gao, Kidal and Timbuktu. In 2016, humanitarian agencies recorded one case of sexual violence attributed to MNLA. In 2017, MINUSMA recorded one case of conflict-related sexual violence allegedly committed by a member of HCUA and three cases of acts committed by members of CMFPR-2. See report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48; Report of the Secretary-General on conflict-related sexual violence (S/2017/249), 15 April 2017, para. 47; Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016-June 2017) (French), February 2018, para. 68; Report of the Secretary-General on conflict-related sexual violence (S/2018/250), 23 March 2018, para. 52.

[1184] Report of the Secretary-General on conflict-related sexual violence (S/2015/203), 23 March 2015, para. 39.

[1185] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 10; Report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/73/278), 30 July 2018, para. 39.

[1186] Report of the Secretary-General on conflict-related sexual violence (S/2018/250), 23 March 2018, para. 52; Unilateral communique of CMA (MNLA, HCUA, MAA) on preventing and combating conflict-related sexual violence, 2017.

systematically with periods when GATIA controlled a city or a territory.[1187] For that reason, since 2015, GATIA has been included in the list of parties credibly suspected of committing, or being responsible for, patterns of rape or other forms of sexual violence against women and children in situations of armed conflict on the Security Council agenda.[1188]

741. The Commission notes, however, that the Plateforme has undertaken initiatives to combat sexual violence and punish any perpetrators of such violence. In September 2015, political leaders of the Plateforme issued a statement of commitment to further engage their military and political wings in efforts to combat sexual violence in conflict and to work with MINUSMA towards an action plan.[1189] On 30 June 2016, the Plateforme signed a unilateral communiqué in which it agreed to work with CMFPR-1, MAA-Plateforme and GATIA to accelerate efforts to prevent and punish sexual violence within their ranks.[1190]

(b) Extremist armed groups

742. Since 2015, extremist armed groups in Mali have been particularly active in the central part of the country, where they have expanded rapidly. The Macina katiba, a fighting unit of Ansar Eddine, is one of the main extremist armed groups active in the Mopti region and in the north of the Ségou region. The group imposes its interpretation of Sharia law in the areas under its control in the Mopti region.[1191] According to the information collected, in 2017, the group banned several local customs and severely restricted freedoms, particularly for women.[1192]

743. Most of the allegations of sexual violence collected by the Commission for 2017 and 2018 in the Mopti region were attributable to the Macina katiba.[1193] The available evidence suggests that extremist

[1187]MIMUSMA has reported about 18 cases of sexual violence committed by members of GATIA between 2015 and 2018. Several cases of conflict-related sexual violence were recorded when GATIA controlled Ménaka (Gao region) and Anéfis (Kidal region). In Ménaka, the wives and daughters of CMA members were allegedly deliberately targeted. Similarly, in Anéfis, the sexual violence suffered by the women of the region coincided with the military control of the city by GATIA. Report of the Secretary-General on conflict-related sexual violence (S/2017/249), 15 April 2017, para. 47; See report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48.

[1188]Report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48; Annex - List of parties credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict on the Security Council agenda; Report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48; Annex - List of parties credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict on the Security Council agenda.

[1189]See report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 50.

[1190]Report of the Secretary-General on conflict-related sexual violence (S/2017/249), 15 April 2017, para. 48; Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 35; Report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821), 24 August 2017, para. 115.

[1191]ICG, Parler aux jihadistes au centre du Mali: le dialogue est-il possible ? No. 276, 28 May 2019.

[1192]That included requiring women to cover their bodies from head to toe and prohibiting them from moving around unaccompanied by their husbands or male relatives; Testimony No. 543; Nomade Sahel, La Situation des femmes dans le Delta central du fleuve Niger (Mali) de 2015 à nos jours, 14 December 2018.

[1193]For example, on 29 July 2017, in the village of Dialloubé (Mopti region), a 21-year-old woman was flogged and raped by members of an extremist group who accused her of going out after the curfew imposed by the Macina katiba. The Commission received information from organizations on the ground regarding allegations of women being raped when they went to fetch firewood in January 2018, of others

armed groups use rape to pursue their goals of controlling the regions and imposing their version of Islamic law. However, the Commission notes that investigations must continue into those cases, most of which took place after the end of its temporal mandate, in order to show the extent of the violence and to determine whether such sexual violence is part of a war strategy.

(c) Defence and security forces

744. Of the 14 cases of sexual violence between 2014 and 2018 reported by MINUSMA, the Commission documented several cases of rape committed by the defence and security forces in northern cities since they regained control of the area in 2013.[1194] Most of the reported cases of rape involving military personnel concerned girls between the ages of 11 and 16.

745. The Commission is of the view that sexual violence is not a war strategy or a widespread practice within the defence and security forces, and that the cases documented are rather individual incidents that are not directly encouraged by the hierarchy. On the contrary, these incidents are said to be acts of indiscipline by military personnel taking advantage of the context of widespread insecurity and the vulnerability of women and girls stemming from their tenuous economic conditions and the traditional subordination of women in society.

746. Of the cases reported and documented, the perpetrators have been identified and are known to the hierarchical authorities, but no judicial action has been taken so far. The Commission collected evidence that, in at least one case, a military commander put considerable pressure on the family to withdraw its complaint and to reach an amicable settlement. In cases of sexual violence committed by the Army, the military authorities tend to enter into extrajudicial settlements, such as asking the soldier to marry the victim or to pay for the victim's medical expenses. This shows that there is a mechanism of impunity and that the defence and security forces downplay the seriousness of these incidents.[1195] The lack of a firm and appropriate response to these incidents by the hierarchy and the criminal justice system is a factor that allows sexual violence committed against girls and women by military personnel to go unpunished, a practice which could in the long run be interpreted by soldiers as being acceptable to the military hierarchy.[1196]

747. Moreover, when sexual violence is attributable to the defence and security forces, the civilian population is left helpless, with no authority to turn to in order to demand justice. Impunity for sexual violence committed by members of the defence and security forces keeps the perpetrators in positions

being abducted from a transport vehicle in Douentza and raped by armed men, and of a third woman being raped in her home by individuals who may have belonged to the Macina katiba. Confidential document of MINUSMA; FIDH-AMDH, In Central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018, pp. 41-42; Testimony No. 543.

[1194] In particular, the Commission confirmed the rape of a woman by a member of the National Guard in early March 2013 during a military operation in Kadji Dar Es Salam, near Gao. The other cases concerned two representative incidents in Gao and Timbuktu in 2014 involving girls aged 14 and 16; Testimony No. 546; Case No. CEI 46; Case No. CEI 24; Case No. CEI51 and footnote in case No. CEI30; Confidential document of HRPD, MINUSMA. The Commission also received information to the effect that, in 2012, in the context of the attempted counter-coup in Bamako, the wives and daughters of RCP soldiers or "red berets" were allegedly victims of sexual violence. That information was reported by the Human Rights and Protection Division of MINUSMA and by other indirect sources interviewed by the Commission. Report of the Secretary-General on sexual violence in conflict (A/67/792-S/2013/149), 14 March 2013, para. 55.

[1195] Testimony No. 528.

[1196] Testimony No. 508.

of authority, thus effectively reducing the prospects of intervention, arrest and reparation for victims. This type of impunity also has a particularly devastating effect on the confidence that people have in the Army, as the defence and security forces are mandated to protect the civilian population and "their uniforms should symbolize security, discipline and public service, rather than rape".[1197] Their mandate to protect the civilian population is thus misdirected.

(d) Unidentified armed individuals

748. The Commission documented many cases of sexual violence committed by unidentified armed men.[1198] It should be noted that most victims were not able to identify their attackers during the Commission's investigations, because none of the armed groups had specific uniforms with which they could be identified. They almost always wore the same attire that Malian men from the northern regions wear on a daily basis. In most cases, victims described their attackers by their skin colour or ethnicity, and as wearing a "boubou" with long or short pants and a turban.[1199] What the assailants had in common, however, was that they all carried firearms. As the descriptions were rather broad in nature, the Commission, in many cases, was not able to identify the perpetrators specifically or the groups to which they belonged. It is extremely difficult to determine, in such cases, whether the sexual violence was attributable to organized groups or whether it was the consequence of the proliferation of firearms in the country[1200] and the criminal opportunities created by the lack of State presence.[1201]

iii. Profile of victims

749. The Commission notes that the victims of sexual violence from the beginning of the crisis were women and girls of all ages, the youngest being 7 years old and the oldest 75 years old.[1202] The majority of the victims were based in Timbuktu, Gao (including Ménaka), Kidal and Mopti, as these are the

[1197] See case No. CEI51, case No. CEI46.

[1198] Testimonies Nos. 138, 139, 176, 179, 180, 199, 261, 213, 257, 262, 311, 319, 331 and 371.

[1199] Testimonies Nos. 139, 176, 179 and 213; Small Arms Survey, Expanding Arsenals Insurgent Arms In Northern Mali, 2015.

[1200] The Commission notes that since the beginning of the crisis in 2012, there had been a proliferation of small arms and light weapons in Mali. The Ménaka gendarmes informed the Commission that many firearms were circulating in the city, making it difficult to conduct investigations. Report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 49; Meeting with source No. 97.

[1201] The Commission documented several cases of rape committed by unidentified armed men on the roads. In 2017, MINUSMA also documented eight cases of sexual violence committed by unidentified armed men against women and girls travelling by public transport on the road linking the key regions of Gao, Timbuktu, Ménaka and Mopti and the Niger border. For example, in September 2017, a young woman approximately 20 years of age was reportedly raped by armed men and then killed on the N'gouma-Bambara Maoudé road, in the Timbuktu region, and a few weeks later, the same fate befell an 18-year-old girl between Douentza and Gao. See case No. CEI30; Report of the Secretary-General on conflict-related sexual violence (S/2015/203), 23 March 2015, para. 36. Report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48; Report of the Secretary-General on conflict-related sexual violence (S/2018/250), 23 March 2018, para. 52; Confidential document of HRPD, MINUSMA. Criminal complaints with accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also Studio Tamani, Viol a Tombouctou pour Amnesty International c'est un "crime-de-guerre"; 17 September 2017 (an 18-year-old girl raped by armed men on the Douentza-Gao road).

[1202] Testimony No. 199; Criminal complaints with accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015.

regions of Mali most affected by the crisis since 2012 and where the security situation remains tenuous, owing to the presence of various major armed groups.

750. The Commission notes that a large majority of the victims of sexual violence were Bella Tuareg and Songhaï women or girls or dark-skinned women.[1203] The Commission therefore notes that, according to the analysis of several witnesses, sexual violence was committed on the basis of skin colour, particularly during the offensives by extremist armed groups and MNLA in 2012 and 2013. The analyses confirm that the victims were generally from "dark-skinned" populations, which are considered inferior by their generally "light-skinned" aggressors and members of armed groups. One witness told the Commission that "when the rebels arrived, they attacked people on a racial basis. They had no consideration for dark-skinned people. When they arrived in Ménaka, they attacked the dark-skinned people of the different communities. Those who carried out the attacks were 'redskins'".[1204]

751. The Commission is of the view that several factors may explain why the majority of the victims of sexual violence documented in the northern regions were Bella Tuareg and Songhaï women and girls. First, these communities make up the majority of the population in the northern regions, particularly in Timbuktu and Gao, and are also found in Kidal and Ménaka. Economically, they are the poorest communities in these regions.[1205] As a result, most Bella Tuareg and Songhaï women and girls could not afford to leave the northern cities during the 2012 crisis. One witness told the Commission that most of the Bella Tuareg and Songhaï women who were raped at Ménaka were very poor and were not able to leave their "huts" in 2012, making them easy targets for the armed groups.[1206]

752. Victims often described their attackers as light-skinned men, suggesting that they belonged to the Arab and Tuareg communities in Mali, or light-skinned foreigners. The armed groups active in 2012 and 2013 were largely composed of individuals from these three categories, which may explain why a significant number of perpetrators of sexual violence were from these communities. In addition, the Bella Tuareg and Songhaï were perceived by some members of the armed groups as communities that were politically supportive of the Government of Mali.

753. Furthermore, Malian society has long been hierarchy-based, particularly within and between large families, communities, ethnic groups, castes, tribes, factions, etc. The complementary and interdependent relationships between these different categories have been one of the main foundations of cohesion in the society. However, it also results in people being viewed unequally within society,

[1203] FIDH-AMDH, War crimes in North Mali, July 2012, p. 15; Report of the Secretary-General on sexual violence in conflict (A/67/792-S/2013/149), 14 March 2013, paras. 52-53. This does not mean that women from other communities, including Arab, Tuareg, Fulani and mixed Fulani-Tuareg women, were not victims. In the central part of Mali, for example, the victims were most often from the Fulani community.

[1204] Testimonies Nos. 426, 543 and 306; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/22/33), 7 January 2013, para. 32; See confidential report of a local civil society organization ("In general, the ethnic groups most affected by sexual violence are the Songhai and Bellas. None of them belong to the Tamasheq or Arab group. It should therefore be stressed that the victims identified were all "black". On the contrary, almost all of the 92 aggressors were "white"; the majority of them spoke Tamasheq or Daoussaq".

[1205] In Timbuktu and Gao, many Bella Tuareg and Songhaï work for rich Arabs and Tuareg who are a minority among the population. These minority communities are relatively economically powerful, giving rise to some level of inequality and discrimination.

[1206] Testimony No. 546.

depending on their origin.[1207] Slavery by descent resulting from this hierarchical arrangement still exists today in Mali. Although slavery was officially abolished at the beginning of the twentieth century, the process by which former slaves broke away from their masters was slow and gradual.[1208] For the northern regions, although the descendants of slaves live less often with their former masters, there still exists, even when living apart and despite the abolition, a relationship of subordination, dependence and more or less pronounced inequalities between the different groups on the basis of this ancestral characterization. For example, the men and women of the Bella community, traditionally a slave caste within the Tuareg community, are still perceived as an inferior group in society, regardless of their economic status today. In that context, if a man rapes a woman or girl from a group considered inferior to his own, and even more so if the woman or girl is a former slave caste, such action could appear acceptable and less serious, or even not be considered sexual violence by the perpetrators.[1209]

iv. Sexual violence against men and boys

754. Sexual violence against men and boys is not a strategy or practice of armed organizations in the context of the conflict in Mali. Nevertheless, the Commission gathered some information on sexual violence against men and boys linked at least indirectly to the conflict. The Commission received information from two sources it considered independent and reliable that, at the Kati military camp in May 2012, at least four soldiers detained in the context of the counter-coup were forced by other Malian Armed Forces soldiers to have sexual relations with each other.[1210] Nonetheless, it did not interview any witnesses in connection with that incident. The Commission also received information concerning the case of 16 boys who were sexually abused in 2015 by the head of an Islamic school affiliated with MUJAO. One source informed the Commission that a complaint was filed against the alleged perpetrator, who was allegedly from the Arab community. He was arrested and later released without trial.[1211]

2. Conflict-related sexual violence in Mali: consequences, impacts and responsibility

755. The Commission is able to draw several important messages from its investigation and the understanding gained from its analysis of sexual violence committed during the conflict since 2012.

i. Impact of sexual violence and conflict on women and girls

756. Acts of sexual violence related directly or indirectly to the conflict since 2012 have had serious and lasting physical and psychological impacts on women and girls. The women interviewed by the Commission revealed that they had suffered internal lesions and other serious gynecological injuries,

[1207] IMRAP, Autoportrait du Mali sur les Obstacles à la Paix, March 2015, p. 27.

[1208] Helené Lackenbauer, Magdalena Tham Lindell and Gabriella Ingerstad "If our men won't fight, we will", A gendered analysis of the armed conflict in Northern Mali, November 2015, p.35.

[1209] Confidential document of HRPD, MINUSMA. Testimony No. 500.

[1210] See case No. CEI37; See also report of the Secretary-General on conflict-related sexual violence (S/2016/361), 20 April 2016, para. 48, referring to a case of sexual violence against a man documented by a United Nations service provider in 2015. The Commission was unable to verify that information.

[1211] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 35; Testimony No. 546; Report of the Secretary-General on conflict-related sexual violence (S/2017/249), 15 April 2017, para. 46. (In January 2016, the suspect in a case concerning the alleged sexual assault of 19 children was released from custody).

such as tearing, bleeding, headaches, stomach aches and infections, from those abuses. The Commission also documented cases of miscarriage as a result of the violence suffered. Rape and sexual violence also caused extremely significant psychological trauma for survivors, creating strong feelings of anxiety, insomnia, depression and shame. Women and girls also face the possibility of contracting sexually transmitted diseases. The social consequences of sexual violence are extremely important for the victims and their relatives, leading some husbands to abandon their wives, causing divorces, attacks on family honour and significant social stigmatization.[1212]

757. Access to health care remains a major problem for most victims due to the lack of health centres and health information, and the volatile security situation. Health workers are not available or trained to deal with cases of sexual violence. The distance and time required to reach health centres and the costs associated with care for survivors of sexual violence have prevented many survivors from obtaining health care.[1213] Acceptance of children born of rape is difficult for some mothers, who see them as a constant reminder of the violence they have suffered. Moreover, children born of rape are often stigmatized by the community.[1214] Girls who are survivors of sexual violence can endure many psychological sequelae throughout their adult lives.

758. The conflict also has a significant impact on the daily lives of women and girls in particular. The freedom of movement of women and girls has been greatly affected by the growing insecurity in most parts of northern and central Mali. Women can no longer carry on their daily activities, such as farming or going to the market, or fetching water and firewood, for fear of being sexually assaulted, abducted or killed.[1215] With the conflict and the absence of men from the home or their death due to the conflict, women have been forced to assume their roles as well as those of their husbands within the family.[1216] Female-headed households are particularly vulnerable to poverty, especially when women are deprived of their inheritance rights.

759. Large population displacements caused by the conflict have also had a negative impact on women and girls, with more girls being forced into early marriages, and women and girls being more vulnerable to prostitution or sexual violence in camps for internally displaced persons and host communities.[1217]

ii. Women as actors in the conflict

760. While women and girls are particular victims of the conflict in Mali, it would be simplistic to see them solely as victims. Indeed, women have played different roles during the Malian crisis (as fighters, fighters' associates, mobilizers, victims, peace mediators, etc.), particularly in within the

[1212] Testimonies Nos. 195, 164, 371, 512, 177/138, 182, 311, 257, 199, 149, 147, 544 and 543; Criminal complaints with accompanying civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014 and 6 March 2015; See also report of the Secretary-General on the situation in Mali (S/2012/894), 28 November 2012, para. 23.

[1213] Filio Degni, Ibrahim D. Amara and Reija Klemetti, Women' Experiences in Accessing Maternal and Child Health Services During the Period of the Armed Conflict in the North of Mali, Open Public Health Journal, 2015, Volume 8, pp. 17-22.

[1214] Testimonies Nos. 544 and 543.

[1215] Testimonies Nos. 319, 265, 147, 149, 177/138, 183 and 199.

[1216] Testimonies Nos. 319 and 265.

[1217] Mali, Report on population displacements (French), 21 September 2017; OCHA, Mali: Humanitarian Snapshot, 4 December 2014; See website of R4Sahel, Sahel Crisis.

northern populations, be they Songhaï, Tuareg or Fulani.[1218] Although there is little documentation on the active role played by women in crises, the Commission is of the opinion that women have become increasingly involved, particularly in the 2012 crisis.

761. The Commission takes note of the study in which the intersection of gender and conflict in the regions of Mopti, Ségou and Gao was examined. The results of the study indicate that women play a variety of roles in the conflict in Mali, serving as informants (56%), providers of goods and supplies (38%), wives of fighters (34%), contributors of economic services (29%), and mobilizers encouraging family members to join armed groups (24%). Religion stood out as the main motivating factor for women to support extremist armed groups (50%), while physical protection and economic security were the main drivers for supporting non-state armed groups and significant secondary motivations for extremist armed group recruitment.[1219]

762. The Commission collected information showing that in a few cases women had participated in the conflict as fighters. One witness told the Commission that, at the time of the battle for Aguelhok in January 2012, he saw women in veils with jeans and Kalashnikovs.[1220] For female participants in militia, membership also allows them to transgress patriarchal gender rules and transform their social roles in their communities. For example, in Ganda Izo, women and girls sleep in different barracks than men, but do all their physical exercises together. In 2012, in a training camp for Ganda Izo in Soufouroulaye, in the Mopti region, a female recruit explained it this way: "Here, I am not a woman. I am a soldier. Like the others." [1221]Women also reportedly played a major role in the Macina katiba sleeper cells, helping to gather intelligence, facilitate recruitment and deliver supplies to the men in the bush.[1222]

763. In Kidal, women organized themselves into local associations and played a variety of roles, from providing economic aid to armed groups and logistical support to fighters, to participating in political protests. The main events in Kidal in 2013, 2014 and 2016 were initiated and led by women and young people of Kidal.[1223] One woman told the Commission that she was a member of MNLA while her husband was in the Malian Army. In 2012, the husband was unaware that she was a member of MNLA and was therefore obtaining information from him about the positions and operations of the military, which she then shared with MNLA.[1224] Older women in particular were able to inspire boys or young men to take up arms and seek revenge for previous conflicts The choice that northern women make either to encourage their children to take up arms and demand revenge, or to promote peace still is crucial for the development of conflicts in Mali.[1225]

[1218]Ministry of National Reconciliation and Social Cohesion, Cartographic study of conflicts in the central and northern regions of Mali, April 2018 (Gao, Timbuktu, Ménaka, Kidal, and Mopti).

[1219]Zoé Gorman, Women in Mali: Key influencers in turning the tide, 28 January 2020.

[1220]Testimony No. 355.

[1221]United Nations University, Child involvement with armed groups, p. 167.

[1222]Institute for Security Studies, Mali's young "jihadists": fuelled by or circumstances?, August 2016; ICG, Parler aux jihadistes au centre du Mali : le dialogue est-il possible ?, No. 276, 28 May 2019.

[1223]See case No. CEI43, case No. CEI44 and case No. CEI62.

[1224]Testimony No. 416.

[1225]Helené Lackenbauer, Magdalena Tham Lindell and Gabriella Ingerstad "If our men won't fight, we will", A gendered analysis of the armed conflict in Northern Mali, November 2015, p. 42.

iii. Women as part of the solution to the conflict

764. The participation of women in the peace process is still very low due to the reluctance of the Government and the parties to involve them. Women have been excluded from the mechanisms responsible for implementing and monitoring the Peace and Reconciliation Agreement, and many have expressed frustration in that regard.[1226] One local authority said the following with regard to the involvement of women in the peace process: "Why do we need to involve women; they're not involved in the fight. What would they say? Once the negotiations are over, we can bring them in to talk about its implementation if necessary".[1227] The perception that women have not played a role in the conflict and thus do not need to be involved in peace processes seems to be fairly widely shared by the Government and the signatories, even though it is clear that women have played a role in the conflict. It should be noted that the Security Council has called for the effective and meaningful participation of women in the mechanisms established by the Peace and Reconciliation Agreement to support and monitor its implementation.[1228]

765. Given the power, particularly in northern Mali, of women who, in the Commission's view, could play a decisive role behind the scenes in supporting armed groups or, on the contrary, promoting peace within their communities, it is essential that they play a more effective role in the peace process.[1229]

iv. Justice for victims of sexual violence in Mali

766. The Commission notes that the judicial treatment of sexual violence in Mali, whether conflict-related or not, is problematic, and that few judicial actions are successful, even when a criminal complaint is accompanied by a civil claim from victims. The Commission believes that the lack of appropriate justice for sexual and gender-based violence contributes to the ongoing commission of such violence, particularly in this period of conflict, as perpetrators remain confident that their abuses will go unpunished.

767. Generally speaking, in Mali, even when not conflict-related, sexual violence is usually settled out of court and generally in favour of the man.[1230] For example, in cases of rape under ordinary law,

[1226] Report of the Secretary-General on the situation in Mali (S/2018/1174), 28 December 2018, para. 4. It was only at its meeting of 12 November that the Council endorsed the establishment of a working group on the participation of women in the peace process, under the leadership of MINUSMA.

[1227] Meeting with source No. 91.

[1228] Letter dated 11 July 2018 from the Permanent Representatives of Peru, Sweden and the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General (S/2018/688), 11 July 2018.

[1229] Security Council resolution 2493 (2019) of 29 July 2019 (S/RES/2493 (2019)): "Urges Member States to fully implement the provisions of all previous Security Council Resolutions pertaining to the Women, Peace and Security agenda and to reinforce their efforts in this regard; (3) Urges Member States supporting peace processes to facilitate women's full, equal and meaningful inclusion and participation in peace talks from the outset, both in negotiating parties' delegations and in the mechanisms set up to implement and monitor agreements, encourages Member States to support efforts, including timely support to women to enhance their participation and capacity building in peace processes, in order to address the unequal representation and participation of women in the peace and security agenda".

[1230] See case No. CEI46.

the alleged perpetrators frequently pay for their release.[1231] With insecurity and the absence of the State in the northern regions, local authorities tend to use mediation to resolve cases of sexual violence. Families of victims fearing community reaction sometimes waive their right to seek justice in the courts.[1232]

768. The Commission was able to ascertain that the judicial treatment of cases of sexual violence related to the 2012 crisis has not been satisfactory so far. The TJRC has opted not to focus on searching for the perpetrators and the national courts are in no hurry to address any cases that may be brought to them, despite the administrative circular issued on 12 October 2012 from the Minister of Justice to the judicial authorities mandating them to prioritize prosecutions for crimes of sexual violence committed in the context of the conflict.[1233]

769. The judicial authorities have initiated several proceedings against leaders of armed groups for acts committed in northern Mali, but none of them have involved charges of sexual violence.[1234] Many victims filed complaints of rape in Malian courts in 2014 and 2015, but none of those cases resulted in a trial.[1235] The slowness or even absence of judicial proceedings has a considerable impact on the confidence that victims have in the Government and the judicial system, such that they are even more reluctant to report the sexual violence they suffer to the authorities. With regard to the defence and security forces, none of the cases documented by the Commission has resulted in a trial. Hierarchy can hinder investigations by not providing investigators with access to the military personnel involved.[1236]

770. The Commission takes note of the joint communiqué signed on 1 March 2019 by the Republic of Mali and the Special Representative of the Secretary-General on Sexual Violence in Conflict,[1237] which covers several areas, including the fight against impunity, care for victims, legal response, and support and assistance to the Malian authorities, organizations caring for victims, and victims themselves. The Special Representative has strongly emphasized that "the signing of this joint communiqué is not an end in itself. It is the commitment to its implementation and achievement that matters." The Commission agrees with this position, recalling that Mali has repeatedly expressed the importance it attaches to combating conflict-related sexual violence, although that has not translated into any significant judicial progress since 2012. The Commission urges the Government of Mali to show that it can match its promises with actions.

(B) Grave violations of the rights of the child committed in the conflict in Mali

771. In its work investigating allegations of abuses, violations and crimes committed during the crisis in Mali, the Commission paid particular attention to documenting abuses committed against

[1231] For example, the Commission received credible information on 11 cases of rape committed in Mopti in 2017, where the alleged perpetrators were subsequently released without the knowledge of the victims and their families. It was reported that the alleged perpetrators had paid the gendarmes for their release. Confidential document of HRPD, MINUSMA.

[1232] Meeting with sources Nos. 96, 46, 48, 63, 109, 106.

[1233] Report of the Secretary-General on sexual violence in conflict (A/67/792-S/2013/149), 14 March 2013, para. 57.

[1234] See section on the fight against impunity.

[1235] See section on the fight against impunity.

[1236] Testimonies Nos. 361, 358 and 370; Confidential document of HRPD, MINUSMA; See section on the fight against impunity; Mali ranks 170th out of 172 countries where children are most at risk; Save the Children, Stolen Childhoods: End of Childhood, 2017, pp. 3, 32.

[1237] Joint communiqué of the United Nations and the Republic of Mali, 1 March 2019.

children.[1238] In view of the particular vulnerability of children in armed conflict, the United Nations made the protection of children in conflict a priority of the international community and a major aspect of any crisis resolution strategy.[1239] The Commission therefore sought to establish the extent of those abuses in Mali, to identify, as far as possible, the perpetrators and to determine the actions taken by stakeholders to respond to the challenges of child protection on the ground.

772. Generally speaking, even beyond the conflict itself, the worrying position of children in Malian society (for example owing to the inadequate protective framework, the lack of educational opportunities and professional prospects, the sociocultural understanding of children and their role in society and poverty) has been a factor conducive to the abuses, violations and crimes committed against children during the conflict.[1240]

773. Similarly, the characteristics of the Malian conflict, which is particularly asymmetrical and in which many armed groups operate with modus operandi that do not involve a defined front line, make it impossible to distinguish between belligerents and the civilian population.[1241] In the context of a contemporary armed conflict such as the one in Mali, not only are children among the main victims, but they are also recruited and used by armed groups as instruments of violence.[1242]

774. The Commission chose to approach the documentation of abuses, violations and crimes against children from the perspective of the six grave violations of children's rights identified in Security Council resolution 1612 (2005) and subsequent resolutions: killing and maiming of children; recruitment and use of children; sexual violence against children; abduction of children; attacks against schools or hospitals; and denial of humanitarian access for children.[1243] On the basis of the methodology it used,[1244] the Commission was able to confirm through its investigations that violations, abuses and crimes had been committed against children by the defence and security forces and the armed groups involved.[1245]

[1238] African Charter on the Rights and Welfare of the Child, 29 November 1999. Article 2 defines a child as every human being below the age of 18 years. Article 1 of the Convention on the Rights of the Child of 20 November 1989 defines a child to mean "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". The age of majority in Mali is 18 years. See article 26 of the Penal Code of Mali; Article 281 of the 2011 Personal and Family Code.

[1239] See Security Council resolutions on the protection of children in conflict situations: resolutions 1261 (1999) of 25 August 1999, 1314 (2000) of 11 August 2000, 1379 (2001) of 20 November 2001, 1460 (2003) of 30 January 2003, 1539 (2004) of 22 April 2004, 1612 (2005) of 26 July 2005, 1882 (2009) of 4 August 2009, 1998 (2011) of 12 July 2011, 2068 (2012) of 19 September 2012, 2143 (2014) of 7 March 2014, 2225 (2015) of 18 June 2015 and 2427 (2018).

[1240] UNICEF Mali and UNICEF West and Central Africa Regional Office, La protection sociale et les enfants en Afrique de l'Ouest et du Centre: le cas du Mali, February 2009; Joint Mali and UNICEF Mali report, Pauvreté des enfants et inégalités au Mali: November 2008; CAIRN Centre, La protection sociale des enfants en Afrique en 4 exemples, Regards 2014/1 (No. 45), pp. 70-76.

[1241] GRIP, Les enfants-soldats: un fléau qui perdure, 6 September 2019.

[1242] See case No. CEI28; Case No. CEI76.

[1243] The six grave violations serve as the basis for gathering evidence of violations against children under international human rights law and international humanitarian law in order to provide a warning of the scale of the violations, to strengthen the protection of children in conflict situations and to end impunity.

[1244] See section on methodology.

[1245] See section on legal classification.

1. The six grave violations of children's rights

775. The Commission was able to confirm the information previously reported by the United Nations, namely that between January 2012 and December 2013, parties to the conflict responsible for grave violations against children included AQIM, MUJAO, MNLA, Ansar Eddine and, to a lesser extent, the Malian Armed Forces and pro-Government militias.[1246] It also found that the most affected regions were Gao, Kidal and Timbuktu, particularly during the period when they were under the control of extremist armed groups. The Commission was able to observe that while grave violations against children had significantly decreased between mid-2013 and 2014 in the northern regions of Mali, they had not ceased even after the signing of the Peace and Reconciliation Agreement. In addition, the continued deterioration of the security situation in central Mali since 2015 led to an increase in grave violations against children in the area.

i. Recruitment and use of children

776. The Commission did not identify any cases of recruitment and use of children by the Malian defence and security forces. All documented cases concerned armed groups active in Mali between January 2012 and January 2018.

777. On the basis of the information collected and the testimonies received, the Commission has reasonable grounds to believe that since the start of the crisis in 2012 and throughout the period of its mandate, all the major armed groups were responsible for the recruitment and use of children within their ranks.[1247] It documented specific incidents involving extremist armed groups (MUJAO, Ansar Eddine, AQIM),[1248] CMA member groups (MNLA, HCUA, MAA-CMA)[1249] and Plateforme member groups (GATIA and local self-defence movements, in particular Ganda Koy, Ganda Izo, and FLN).[1250] Children were recruited and/or used in the region of Gao (and since 2016 in the region of Ménaka), in the regions of Kidal and Timbuktu and, to a lesser extent, in the regions of Mopti and Ségou. The Commission also received allegations against other armed groups that it was unable to verify independently, namely: the Macina katiba of Ansar Eddine, Al Mourabitoun, MAA-Plateforme, CPA, MSA and Ganda Lassal Izo.[1251]

778. The Commission notes that cases were documented of children under the age of 15 years in the ranks of armed groups, particularly in 2012 and early 2013. However, the majority of children associated with the groups were boys aged 15 to 17 years. Girls associated with armed groups were

[1246] Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 34 and 35.

[1247] Testimonies Nos. 540, 541 and 424.

[1248] See case No. CEI17; Case No. CEI28; Case No. CEI33; Meeting with sources Nos. 79, 85, 93, 96, 97 and 103.

[1249] See case No. CEI17; Case No. CEI61; Case No. CEI70; Case No. CEI44; Case No. CEI62.

[1250] See case No. CEI27; Case No. CEI80; Case No. CEI70; Report of the Secretary-General on children and armed conflict (A/70/836-S/2016/360), 20 April 2016, para. 94; Meeting with sources Nos. 79, 85, 93, 96, 97 and 103.

[1251] Testimony No. 541; Report of the Independent Expert on the situation of human rights in Mali (A/HRC/31/76), 21 January 2016, para. 68; Report of the Secretary-General on children and armed conflict (A/69/926-S/2015/409), 5 June 2015, para. 124; Report of the Secretary-General on children and armed conflict (A/72/865-S/2018/465), 16 May 2018, para. 114; Report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821), 24 August 2017, para. 112; Report of the Secretary-General on children and armed conflict (A/73/907-S/2019/509), 20 June 2019, para. 114; Report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017), February 2018, para. 73.

generally assigned domestic tasks, while boys received military and firearms training, and in some cases participated directly in clashes. Some lost their lives and others were injured. Otherwise, they participated in group patrols with the adults, manning checkpoints, acting as lookouts and informants, or monitoring prisoners.[1252]

779. As with other United Nations agencies and human rights organizations, it was difficult for the Commission to accurately determine the number of children associated with armed groups. Even the extent of the phenomenon was difficult to estimate, although in the Commission's view the documented cases represent only a fraction of the phenomenon.[1253] Indeed, while children were relatively visible in the ranks of armed groups at the start of the conflict in 2012, the increased presence of the international community in Mali led the armed groups, in particular those signatories to the Peace and Reconciliation Agreement, to be discreet about the practice and to attempt to hide the presence of children within their ranks.[1254]

780. The Commission found that the recruitment of children in armed groups was primarily driven by community and economic considerations. For example, with regard to the period when extremist armed groups controlled the regions of northern Mali in 2012, greed, the promise of Qur'anic teaching and community membership reportedly drove many boys to join Ansar Eddine, MUJAO and AQIM, while others were recruited from communities advocating radical Islam.[1255] Recruitment was facilitated by families, imams and local officials.[1256]

781. More generally, the weak presence of the State in the life of the communities in those regions in terms of the provision of basic services, including education and security of persons and property,[1257] extreme poverty, the lack of professional prospects and the consequences of an environment unfavourable to schooling, in the Commission's view, had a considerable impact on the association of children with armed groups.[1258] Owing to the lack of educational and professional opportunities, military activity is proving to be the only alternative for children between 15 and 17 years of age in the northern regions and, more recently, in the central part of Mali. Joining an armed group is not only a source of income, but also a guarantee to ensure the security of one's community.[1259] The proliferation of military weapons and the frequent and largely community-based clashes between armed groups facilitated children's early familiarity with weapons, their exposure to violence and their training in how to defend their communities. From the age of 15 years onwards, a significant proportion of children (whether in or out of school) living outside the major cities of the north become associated with military

[1252] See case No. CEI28; Meeting with sources Nos. 79, 85, 93, 96, 97 and 103.

[1253] Testimony No. 541.

[1254] See case No. CEI28; Meeting with source No. 85; HRW, Mali: lawlessness, abuses imperil population, 14 April 2015.

[1255] Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 43 and 44.

[1256] Testimonies Nos. 370, 409, 381, 360 and 363; Report of the Secretary-General on children and armed conflict (A/67/845-S/2013/245), 15 May 2013, paras. 91-93.

[1257] Report of the workshop on the context of the Malian crises, 19 September 2019.

[1258] United Nations University, Cradled by conflict: child involvement with armed groups in contemporary conflict, 2016, pp. 142-175.

[1259] Meeting with source No. 85; Mercy Corps, "Nous espérons et nous battons", Les jeunes, les communautés, et la violence au Mali, September 2017, pp. 13 and 14.

activities and the armed group controlling their area, often through a parent.[1260] The Commission was told that the presence of children associated with or belonging to armed groups was due to their family and community ties to the fighters in the groups and to prevent their recruitment by rival groups.[1261]

782. Since the signing of the Peace and Reconciliation Agreement in 2015, an artificial swelling in the number of fighters in the signatory armed groups seeking to benefit from the DDR programme was noted and reportedly resulted in an increase in the number of children within their ranks. The case of children associated with GATIA at the Inekar camp illustrates that parents encouraged their children to join them in the mistaken belief that their children could benefit from the DDR process.[1262]

ii. Rape and other forms of sexual violence against children

783. The Commission collected information and documented cases of sexual violence against girls aged between 7 and 17 years[1263] committed by members of armed groups, unidentified armed men and the defence and security forces in Timbuktu, Gao, Ménaka, Kidal, Mopti and Ségou between 2012 and 2018. The evidence showed that the pattern of sexual violence against girls was no different from that against women. The Commission therefore has presented them together under the section on conflict-related sexual violence.

iii. Killing and maiming of children

784. Children paid a heavy price in terms of the violation of their right to life and physical integrity. The Commission documented numerous cases where children were killed or injured since 2012 as a result of clashes, either because they participated as fighters or because they were caught in the crossfire between the parties. They were also killed or wounded in bombings by the defence and security forces or the French forces. They were victims of abuses by armed groups, attacks by extremist armed groups, rockets and improvised explosive devices and explosive remnants of war, ill-treatment and summary executions by the defence and security forces, and, since 2015, inter-community violence affecting the central part of Mali. Children were also injured during conflict-related demonstrations.[1264] Most of the

[1260] Report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/68/267), 5 August 2013, para. 15; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali (A/HRC/23/57), 26 June 2013, paras. 49-51; Confidential document from a diplomatic source.

[1261] Testimony No. 511; Case No. CEI80.

[1262] See case No. CEI80; Testimony No. 297; Report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821), 24 August 2017, para. 112; Confirmed by the findings of missions led by HRPD of MINUSMA in late 2016 and early 2017 to verify the age of fighters in the pre-cantonment site of the Plateforme and CMA fighters for the Operational Coordination Mechanism in Gao; See report of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017), February 2018, para. 73; Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 26 and 27.

[1263] See cases Nos. CEI46 and CEI51; Testimony No. 546; Civil claims filed with the senior investigating judge of the Court of First Instance of Bamako, commune No. III, 12 November 2014 and 6 March 2015; Report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821), 24 August 2017, para. 115.

[1264] See cases Nos. CEI96 and CEI48; Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 54-57.

victims were boys, and all regions of northern Mali (Gao, Ménaka, Timbuktu and Kidal) and central Mali (region of Mopti and north of Ségou region) were affected.[1265]

785. The Commission did not find that armed groups, including extremist armed groups, had specifically or repeatedly targeted children in the context of the conflict, although that did not prevent children from being among the main victims of the conflict in Mali since 2012. In particular, a considerable number of children were killed, injured and maimed as a result of incidents involving improvised explosive devices and explosive remnants of war.[1266]

786. Furthermore, with the gradual displacement of the conflict to the two regions of central Mali, where an increase was observed in violent extremism, insecurity and inter-community conflict, the number of children killed or maimed continued to rise following the end of the Commission's mandate. In a document published on 28 January 2020, UNICEF reported that 277 children had been killed or maimed in Mali in the first nine months of 2019, double the total number in 2018.[1267]

iv. Abduction of children

787. The Commission did not specifically document any cases of child abduction. Although the phenomenon is not widespread, it cannot be said to be non-existent. During the period between 1 January 2014 and 30 June 2017, the United Nations documented the abduction of 12 boys and 3 girls, 2 of whom were abducted in 2014, 1 in 2015, 7 in 2016 and 5 in 2017. All the children were released after a few days or weeks and some girls were reportedly sexually abused. For 2018, the number of documented cases was eight boys and one girl.[1268] The small number of cases, the large the number of potential perpetrators, and the fact that they were spread throughout the country make it impossible to identify trends or to understand the reasons behind the abductions. The Commission notes, however, that several cases of abduction concerned children with family members who were leaders of armed groups[1269] and that the majority of the victims were of Tuareg ethnicity. All were usually released a few days to a few weeks later, without the perpetrators being identified.[1270] The Commission believes that the abduction of children whose parents had links with armed groups[1271] could be part of a settling of scores or pressure tactics related to the conflict. conflict."

Attacks on schools and hospitals and occupation of schools

788. The armed groups active in 2012 (MNLA, Ansar Eddine, AQIM and MUJAO) were responsible for most of the attacks carried out against schools and hospitals and their staff. The United Nations stated in a report that "in April and May 2012, at least 115 schools in the regions of Kidal, Timbuktu, Gao and Mopti were attacked, pillaged or sacked by the armed groups", and that "out of the 1,581 health

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[1265] See cases Nos. CEI56, CEI20, CEI88, CEI89, CEI91, CEI28, CEI58, CEI95, CEI39, CEI55, CEI12, CEI61, CEI64, CEI96, CEI47, CEI72, CEI73, CEI79 and CEI52; Section on explosive remnants of war and improvised explosive devices.

[1266] Section on explosive remnants of war and improvised explosive devices.

[1267] Voix de Bamako, Les violences au Sahel ont un "impact dévastateur" pour les enfants, 29 January 2020.

[1268] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 43 and 44.

[1269] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 43 and 44.

[1270] Abductions took place in the region of Kidal (seven children), the region of Ménaka (three children), the city of Bamako (two children) and in the regions of Timbuktu, Mopti and Gao (one child in each of those regions).

[1271] Between January 2014 and June 2017, at least four of the abducted children were related to leaders and commanders of armed groups.

structures in Mali, 29 were completely destroyed and 226 health structures were partially destroyed in the conflict."[1272].

The Commission documented cases of schools and hospitals being pillaged and destroyed in 2012 in the cities of Gao, Mopti, Timbuktu and Ménaka, and received information about pillaging in other locations, including Kidal, Ansongo and Nampula.[1273] Those incidents were attributable primarily to MNLA and, to a lesser extent, to MUJAO and Ansar Eddine.[1274] The United Nations verified 51 incidents of schools and their staff being attacked between January 2014 and June 2017 and 11 cases of medical personnel being attacked between 2016 and June 2017.[1275]

789. All parties to the conflict (the armed groups and the defence and security forces) have occupied schools for military purposes at some point during the conflict. Even MINUSMA had to use three schools at the beginning of its deployment, before asking the Government of Mali to provide new premises and then refurbishing the schools after its departure.[1276] The extremist armed groups active in 2012 occupied a large number of schools for military purposes, but that of course came to an end with their defeat in 2013. The United Nations has confirmed that 20 schools were used for military purposes in 2014, 7 in 2015 and 14 in 2016 and 2017, mainly by MNLA, CMA groups and CPA groups.[1277]

vi. Denial of access to humanitarian assistance

790. The Commission collected information about and documented several attacks against members of humanitarian organizations in the regions of Kidal and Gao in 2016 and 2017, and also incidents of pillaging of food depots, including those of WFP and ICRC, in Gao in 2012 and Kidal in 2016.[1278] Until 2014, attacks on humanitarian workers in the context of the conflict in Mali were rare. Between 2012 and early 2013, the control exercised over the northern regions of Mali by armed groups, which resulted in the absence of service providers on the ground, together with the restrictions on movement and the extremely volatile security situation, limited access to humanitarian assistance. However, it was possible to negotiate the delivery of direct humanitarian assistance for children during the period when extremist armed groups were in control of those regions and after the return of the French-backed

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[1272] Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 64–73.

[1273] Testimonies Nos. 229, 222 and 466; Global Education Cluster, Evaluation rapide à distance - Situation et besoins éducatifs au Nord du Mali (Gao – Kidal – Mopti – Tombouctou), August 2012; UNESCO, "I rescued the textbooks before they raided my school." A teacher from Gao (Mali) speaks out, 2 April 2013; UNESCO, Schools in northern Mali are barely functioning, concludes mission by UNESCO and Government of Mali, 19 November 2013 ("During the occupation, many schools in Timbuktu, Gao and Kidal were destroyed. The mission observed that much of the educational infrastructure was vandalized or pillaged. School furniture was destroyed and used as fuel; electric and digital equipment (generators, cables, servers, computers, and printers), books and laboratory material were damaged or burned.").

[1274] See case No. CEI12; Case No. CEI19.

[1275] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 38–42; Jeune Afrique, Mali : une école saccagée et incendiée par des jihadistes présumés, 25 May 2017.

[1276] Report of the Secretary-General on children and armed conflict (A/69/926–S/2015/409), 5 June 2015, para. 128 ("Peacekeepers of the United Nations Multidimensional Integrated Stabilization Mission in Mali used three schools in Gao city, Ansongo Cercle and Tabankort.").

[1277] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 41. See also OCHA, Mali Cluster Education, Aperçu des besoins humanitaires, 6 October 2015, para 2.

[1278] See case No. CEI63; Case No. CEI12.

defence and security forces. Many of the hospitals and health centres that were pillaged in 2012 resumed their activities in 2013.[1279]

791. From 2014 onwards, denial of access to humanitarian assistance took the form of regular attacks on humanitarian workers (murders, kidnappings, physical violence and armed robberies). The United Nations documented 224 incidents of humanitarian access being denied between January 2014 and June 2017. While some of the attacks were attributable to the extremist armed groups active in the north (particularly Ansar Eddine and MUJAO, in the cases documented by the Commission), many were attributable to unidentified armed men.[1280] It is difficult to ascertain how many of the attacks were motivated by ideologies of extremist armed groups that conflicted with the values represented by the humanitarian actors and how many were organized crimes or crimes of opportunity committed largely because the perpetrators were able to take advantage of the insufficient State presence and the insecurity in the region. A few of the incidents were attributable to the armed groups that signed the Peace and Reconciliation Agreement. Between 2012 and January 2018, the regions most affected by denial of access to humanitarian assistance were Kidal, Gao (including Ménaka) and Timbuktu. Incidents also began to occur in the Mopti region in 2016. It is worth noting that the phenomenon has continued to grow since the end of the Commission's mandate. The United Nations documented 170 incidents of denial of humanitarian access in 2018 alone.[1281]

792. As a result of the increase in attacks on humanitarian workers from 2014, access to humanitarian assistance was delayed and several humanitarian organizations had to suspend their activities temporarily at different times and in various areas of the country. Some international non-governmental organizations had to withdraw their foreign staff and work with local associations to ensure the continuity of services, while others stopped providing services altogether.[1282] Organizations supporting schools and school food programmes were particularly affected. While attacks on humanitarian workers had an impact on all segments of the population affected by the conflict, the consequences were particularly significant for children, who were deprived of access to assistance in relation to health care, including vaccinations, and food distribution.

vii. Detention of children for alleged association with armed groups

793. The detention by the defence and security forces and prison authorities of children associated with armed groups, including extremist armed groups, continues to be a cause for concern for child protection actors and the United Nations.[1283] Such children have usually been recruited by armed groups, meaning that they are first and foremost victims and should be treated as such.[1284]

794. When the Malian defence and security forces and the French armed forces recaptured the main cities in the northern regions of Mali, they began arresting children who had been recruited by armed

[1279] Report of the Secretary-General on children and armed conflict in Mali (S/2014/267), 14 April 2014, paras. 71–73.

[1280] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 45–50. See case No. CEI57.

[1281] Report of the Secretary-General on children and armed conflict (A/73/907–S/2019/509), 20 June 2019, para.120.

[1282] VOA Afrique, La violence freine l'aide humanitaire dans le nord du Mali., 12 August 2016; The New Humanitarian, Négocier l'accès humanitaire dans les zones de conflit du nord du Mali, 18 April 2013.

[1283] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 23, 28 and 29.

[1284] ICRC, Child soldiers and other children associated with armed forces and armed groups, August 2012, pp. 8–9; UNICEF, Guide to the Optional Protocol on the involvement of children in armed conflict.

groups. In 2013 and 2018, the French armed forces arrested 34 people who stated that they were under 18. According to the French armed forces, all of those individuals were handed over to the child protection services. According to United Nations reports, 24 boys were detained in Bamako between March and December 2013 for association with armed groups. Between January 2014 and June 2017, 72 boys between the ages of 13 and 17 arrested for association with armed groups were detained and then released. They were detained for periods ranging from a few days or weeks to five years. The Commission also documented the cases of at least two boys, aged 14 and 15, who were detained at DGSE facilities from 25 May to 9 June 2017 before being handed over to child protection services. According to a report of the Secretary-General, in 2018 the defence and security forces arrested 13 boys in relation to the conflict. The boys were released after being detained for periods ranging from 5 to 60 days. Five of them were reportedly subjected to ill treatment.[1285]

795. The practice of detaining children for alleged association with armed groups continues, although it is not widespread. The practice contravenes the protocol signed by the Government of Mali and the United Nations system in Mali in July 2013, pursuant to which children arrested by the Malian defence and security forces and/or their allies must be handed over immediately, in Bamako, or within 48 hours, outside of Bamako, to DNFEP, which shall attend to the children in partnership with UNICEF. The protocol also stipulates that such children shall be held apart from adults until they are handed over, but that provision has not always been implemented.[1286] Determining the ages of arrested individuals can be difficult, and the Commission recognizes that in some cases children claimed to be adults. However, in other cases, children were detained despite having told the Malian authorities that they were under 18. Whenever there is uncertainty as to the ages of arrested individuals, the protocol should apply until such time that their ages have been definitively determined.

2. Impact and consequences of the crisis on children

796. The crisis has had a multidimensional impact on children. The general insecurity has restricted the movements of civilians and humanitarian workers in some areas, depriving families and their children of access to health centres, markets, humanitarian aid and even the possibility of farming, resulting in serious food insecurity. In addition, the ban imposed by the Malian Armed Forces on 20 February 2017 on the use of two-wheeled vehicles in the Mopti and Ségou regions has prevented teachers and health-care workers from moving around out of fear that they would be treated as members of extremist armed groups.[1287]

797. The conflict has had a significant impact on children’s right to education in areas it has affected. School closures have become the rule rather than the exception in the northern regions and in central Mali since 2012. Schools have closed not only due to the precarious security situation, but also due to the vision of society promoted by the extremist armed groups, which are seeking to eliminate secular schools in the areas where they exercise authority or influence and replace them with religious schools or no schools at all. In the same areas, teachers have deserted schools, having come under pressure and

[1285] Confidential document from a diplomatic source; Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, paras. 28–29; Report of the Special Representative of the Secretary General for Children and Armed Conflict (A/68/267), 5 August 2013, paras. 51–53; Report of the Secretary-General on children and armed conflict (A/73/907–S/2019/509), 20 June 2019, paras. 114–116. See case No. CEI38; Case No. CEI97.

[1286] Protocol on the liberation and handover of children associated with armed forces and groups, 1 July 2013.

[1287] Confidential report of HRPD, MINUSMA, pp. 12-13.

received threats, and parents are afraid to send their children to school. Many schools have closed because teachers fear being killed or abducted by members of extremist armed groups.[1288] Inter-community violence has also contributed to school closures in the Mopti and Ségou regions.[1289]

798. According to the report of the Secretary-General on children and armed conflict in Mali for 2012 and 2013, "[…]some 75 to 80 per cent of school-age children who were receiving an education before the crisis in the three northern regions of the country were estimated not to have attended classes in 2012 and the first half of 2013. Mali's Education Cluster in 2012 estimated that 85 per cent of teachers had fled the North to neighbouring countries or to their home regions in the South." The Commission received information from credible sources, including academic sources, confirming that despite some improvement in 2013 and 2014, the central part of Mali was also affected by school closures from 2015.[1290] According to the United Nations, between January 2014 and 30 June 2017, that resulted in "79,800 children being unable to access schools in the Mopti region alone". In northern Mali, it is estimated that more than 380,000 children aged 7 to 15 have been out of school since 2016 owing to school closures as a result of insecurity and attacks on infrastructure.[1291]

799. On the basis of evidence obtained during its investigation and from testimonies, the Commission notes that the 2012 crisis has severely affected children's right to education in Mali, particularly in the regions of Ségou, Mopti, Timbuktu, Gao (including Ménaka) and Kidal, and that the right to education has come increasingly under threat since 2015 in the two central regions of Mopti and Ségou because of the militancy of violent extremist groups.

3. Actions taken by the actors in the conflict and challenges

800. The Commission has taken note of and welcomes the various measures taken by the parties to better protect children from the impact and consequences of the conflict, while also noting the challenges they all face.

i. Government of Mali

801. Mali is a "good student" in terms of ratification of international and regional human rights conventions, particularly those on the issue of children.[1292] In February 2013, the Government of Mali also adopted an interministerial circular on prevention, protection and the return to families of children associated with armed forces and armed groups.[1293] It signed a protocol with the United Nations system

[1288]Testimonies Nos. 238, 279, 268, 372 and 167.

[1289]See case No. CEI95.

[1290]Interviews with sources Nos. 85 and 102; Testimony No. 268; OCHA, Mali: humanitarian needs overview 2018 (French), November 2017, p. 18 (At the end of the 2016-2017 school year, 500 of the 4,872 schools in the 66 communes affected were closed, compared with 296 during the period 2015-2016. The reason for that increase was reportedly the ongoing insecurity, particularly in the Mopti region, where 277 of the 1863 schools were closed, representing 55 per cent of all closed schools); UNICEF, Mali humanitarian situation report, January-March 2017, 31 March 2017; Evaluation de la réponse humanitaire de l'UNICEF à la crise malienne 2013-2017, 28 March 2018, p. 20.

[1291]Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 40; OCHA, Mali: humanitarian needs overview 2018 (French), November 2017, p. 18.

[1292]See section on Applicable law and annex 1 - Notice on applicable law.

[1293]Interministerial circular on prevention, protection and the return to families of children associated with the Armed Forces and armed groups, 7 February 2013.

in Mali in July 2013,[1294] which is still in force, pursuant to which arrested children must be handed over to DNPEF, which shall attend to them in partnership with UNICEF. The Ministry for the Advancement of Women, Children and Families validated, with the support of MINUSMA and its partners, strategic guidance on the identification, separation and reintegration of children associated with armed forces and groups for the national strategy on the disarmament, demobilization and reintegration of children.[1295] In that regard, transit and orientation centres are now operational in the regions of Gao, Mopti and Bamako to facilitate the care of children released from armed groups and unaccompanied children.[1296] On 1 February 2018, Mali endorsed the Safe Schools Declaration, aimed at protecting education facilities from military use during conflict.[1297]

802. The Commission notes that the Government of Mali undoubtedly attaches importance to the issue of children in armed conflict. However, Mali must not limit itself to making commitments on paper; it must also ensure that they are systematically implemented. More than eight years after the start of the conflict, a number of issues, such as access to education, justice for abuses committed against children[1298] and the detention of children for alleged association with armed groups still pose implementation challenges.

803. The fight against impunity for violations, abuses and crimes committed against children also remains a challenge for Mali. The Commission notes that the national authorities have made little progress in prosecuting and trying those responsible for abuses against children, including in cases of sexual violence.[1299] Although five ministers firmly stated in the interministerial circular of 7 February 2013[1300] that those responsible for the recruitment and use of children would be "severely punished in accordance with the Penal Code", the Commission is not aware of a single trial that has been held in relation to children associated with armed groups. The Commission believes that prosecution and trial by the national courts for abuses against children committed in the context of the conflict would send a strong message to the perpetrators and help prevent further abuses.

804. Furthermore, access to justice by child victims[1301] remains a concern in the north of the country because of fear of reprisals, stigmatization, the negotiation of out-of-court settlements, even in criminal matters, their distance from the cities where courts are located, the complexity of the procedures, the cost, a lack of trust in the justice system and extreme poverty.[1302]

[1294] Protocol on the release and handover of children associated with armed forces and groups, 1 July 2013.

[1295] Report of the Secretary-General on the situation in Mali (S/2016/1137), 30 December 2016, para. 38.

[1296] Report of the Secretary-General on children and armed conflict in Mali (S/2018/136), 21 February 2018, para. 65.

[1297] Letter dated 8 August 2018 from the Panel of Experts established pursuant to resolution 2374 (2017) on Mali addressed to the President of the Security Council (S/2018/581*), 9 August 2018, para. 166; Security Council, 8229th meeting (S/PV.8229), 11 April 2018, p. 2.

[1298] Security Council, Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Mali (S/AC.51/2018/1/Rev.1), 19 June 2018.

[1299] Report of the Secretary-General on conflict-related sexual violence (S/2019/280), 29 March 2019, para. 62.

[1300] Interministerial circular on prevention, protection and the return to families of children associated with the Armed Forces and armed groups, 7 February 2013.

[1301] Global Protection Cluster, Justice for children in humanitarian action: Impact of the armed conflict in Mali, 2016; White & Case LLP, Access to justice for children: Mali.

[1302] International Catholic Child Bureau (BICE), presentation to the Human Rights Council, Annual full-day meeting on the rights of the child, 13 March 2014; White & Case LLP, Access to justice for children: Mali.

805. According to the general principle of the best interests of the child, children associated with armed groups should be considered primarily as victims.[1303] However, the Commission noted in the course of its investigations that children stopped by the Malian defence and security forces were sometimes treated as adult enemy fighters. Thus, despite the agreement between the Government and the United Nations system in Mali, cases of non-compliance with the handover protocol are regularly reported and they concern in particular children detained for alleged association with terrorist groups.[1304] MINUSMA and other United Nations bodies must continue to advocate for their release.[1305]

ii. Armed groups

806. Several armed groups have been listed by the Secretary-General in annex I of his annual report on children and armed conflict. MNLA, Ansar Eddine and MUJAO were listed as parties to the conflict that recruit and use children and commit rape and other forms of sexual violence against children (in 2013), and the Plateforme was listed as a party to the conflict that recruits and uses children (in 2018).[1306]

807. The inclusion of those armed groups on the list has made it possible to formalize the dialogue with some of them. While no discussions are being held with the extremist armed groups, the armed groups of CMA and the Plateforme have held a dialogue with the Special Representative of the Secretary-General for Children and Armed Conflict with a view to their removal from annex I. The armed groups of CMA signed an action plan with the United Nations in March 2017[1307] aimed at preventing the recruitment and use of children and the commission of sexual violence against them; they maintain an ongoing dialogue regarding implementation of the action plan.[1308] It is encouraging that CMA signed the action plan on behalf of its constituent groups (MNLA, MAA-CMA and HCUA), and not only on behalf of MNLA, even though MNLA was the only CMA group to have been included on the list. However, in his report for 2018, the Secretary-General expressed concern about the slow pace of implementation of the action plan and the continued recruitment and use of children by armed groups.[1309] CMA informed the Commission that about 43 per cent of the action plan had already been implemented, including the appointment of the 18 regional focal points.[1310] It said that there were two challenges facing implementation, namely, the financial resources allocated and the limited human resources devoted by MINUSMA to implementation in the active phase of the action plan, and reiterated

[1303] Report of the Secretary-General on children and armed conflict (A/73/907–S/2019/509), 20 June 2019, para.12.

[1304] Global Protection Cluster, Justice for children in humanitarian action: Impact of the armed conflict in Mali, 2016.

[1305] Security Council, Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Mali (S/AC.51/2018/1/Rev.1), 19 June 2018, paras. (f) and (g).

[1306] Report of the Secretary-General on children and armed conflict (A/67/845*–S/2013/245*), 15 May 2013, para. 214; Report of the Secretary-General on children and armed conflict (A/72/865–S/2018/465), 16 May 2018, para. 261.

[1307] Report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/73/278), 30 July 2018, para. 39 ("Action plans remained a key tool for engaging with armed groups. In Mali, for instance, following the signing in March 2017 by the Coordination des mouvements de l'Azawad of an action plan to end and prevent grave violations against children, the group established focal points and defined priority activities, including the screening of troops, to identify associated children.")

[1308] Measures had already been taken internally prior to that action plan. For example, in a military directive issued in September 2014, the joint command of MAA-MNLA in Timbuktu called for the elimination of sexual violence against children. Report of the Secretary-General on conflict-related sexual violence (S/2015/203), 23 March 2015, para. 39.

[1309] Report of the Secretary-General on children and armed conflict (A/73/907–S/2019/509), 20 June 2019, para.122.

[1310] Testimony No. 536; Priority activities of the United Nations-CMA action plan.

its intention to implement the action plan in full and to continue to work actively with the United Nations, in particular with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

808. The United Nations and the groups of the Plateforme, including GATIA, Ganda Izo and Ganda Koy, continue to discuss the signing of an action plan. The Plateforme has already undertaken some initiatives, including the signing of a unilateral communiqué to combat conflict-related sexual violence in June 2016.[1311] The Commission takes a positive view of that dialogue. It urges the armed groups that are members of the Plateforme to sign an action plan soon in order to support those initiatives and to give effect to its commitment to end conflict-related violations against children. The Commission notes that, despite strong and specific evidence demonstrating that GATIA continued to recruit and use children in 2016 and 2017, [1312]interviews with GATIA leaders show that the group gives little credibility to the information collected by the United Nations on the issue and continues to deny the presence of children within its ranks.[1313] However, the group states that it is willing to sign an action plan with the United Nations with a view to its removal from the annexes of the Secretary-General's reports. Nevertheless, the Commission is of the opinion that signing an action plan between the Plateforme and the United Nations will only be meaningful if the armed groups of the Plateforme recognize the reasons that led the Secretary-General to place them on the list of groups that recruit and use children.

809. In conclusion, the Commission notes that the situation of children affected by the conflict remains of concern, with continued attacks involving improvised explosive devices and threats and risks that restrict the right to a safe environment and an education, in particular a secular education. The Commission believes that increased awareness-raising, advocacy and training activities for all parties to the conflict and the continued support of the Malian State by the United Nations and international partners will lead to recognition of the serious violations and abuses of children's rights and to greater accountability among the actors with respect to the protection and promotion of the rights and well-being of Malian children.

(C) Explosive remnants of war and improvised explosive devices

810. Since the start of the conflict, and particularly in the northern regions and central part of Mali, improvised explosive devices and explosive remnants of war have posed specific security threats. Improvised explosive devices, made and used primarily by extremist armed groups, and explosive remnants of war from munitions abandoned by all parties to the armed conflict represent a continuing threat to the civilian population.

[1311] In a unilateral communiqué dated 29 June 2016, the Plateforme expressed the commitment of its military and political leaders to combating conflict-related sexual violence against adults and children. The following day, Plateforme political and military leaders signed a communiqué committing the Plateforme's armed groups to addressing conflict-related sexual violence. A one-year implementation plan was adopted in October 2016. In addition, according to the United Nations, between December 2016 and January 2017, Plateforme leaders informed the Organization of 70 children associated with the group and highlighted the need to put in place effective reintegration programmes to prevent their being recruited again by other armed groups. Report of the Secretary-General on conflict-related sexual violence (S/2017/249*), 15 April 2017, para. 48.

[1312] See case No. CEI70 and case No. CEI80.

[1313] Testimony No. 503.

1. *Explosive remnants of war*

811. The Commission documented many cases in which civilians, including children, were injured or killed when explosive remnants of war left at the scene of clashes between the Malian Armed Forces and armed groups or between armed groups exploded accidentally.[1314] For 2012, the year that armed groups took control of the north of the country, MINUSMA recorded at least 38 incidents, most of which occurred in the Gao and Timbuktu regions. In 2013, when the defence and security forces and the French armed forces recaptured the northern regions of Mali, 30 such incidents were recorded in the northern regions and in the central part of Mali.[1315] Although the number of incidents gradually declined after the end of the clashes between the groups of CMA and the Malian Armed Forces,[1316] they continue to pose a serious threat to the civilian population, especially children, even many years after the fighting has ended.[1317]

812. In that context, the Commission recalls that Mali is a State party to the Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Protocol V), adopted on 28 November 2003, which provides, inter alia, that "[…]after the cessation of active hostilities and as soon as feasible, each [...] party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control".[1318]

2. *Improvised explosive devices*

813. Improvised explosive devices (IEDs) are designed as booby traps and are usually placed on roads by the extremist armed groups.[1319] They can be detonated by a radio or remote control device, or by the victims themselves. The latter is by far the most common system in Mali, with around 90 per cent of the devices used in the conflict being victim operated. Such devices also pose the greatest danger to the population since, once placed and activated, they will explode without any further intervention from

[1314] See case No. CEI28.

[1315] See annex 4, Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[1316] According to MINUSMA, 20 incidents were documented in 2014, 17 in 2015, 15 in 2016 and 7 in 2018.

[1317] See case No. CEI28; Case No. CEI69. Other incidents involving explosive remnants of war that the Commission was able to verify: (1) In the Ménaka region, in Teguerette, at the beginning of the second half of August 2015, an (identified) 23-year-old man handled a device that exploded, leaving him with multiple abdominal wounds and injuring his 2-year-old niece (wound on the forehead) and two other children; (2) In the Gao region, on 20 January 2016, on the road to Kidal (seven kilometres from Gao, near Kelsouk), two 11-year-old children sustained injuries to their lower limbs and were hospitalized as a result of handling an explosive device while they were watching over a grazing herd; (3) On 14 May 2016, at approximately 11 a.m. in Talatet, Ansongo cercle, in the Gao region, two children aged 11 and 12 were injured and hospitalized after handling an explosive device; (4) In the Mopti region, on 15 July 2016 at around 3 p.m., in sector I of Sévaré, Mopti region and cercle, an (identified) 12-year-old found a 12.7mm munition in a field and hit it with an iron bar. It exploded and he sustained an injury to his left wrist; (5) On the night of 26 February 2016, an (identified) 11-year-old child picked up a device while out walking in Sévaré. When he returned home, he started playing with the device, which exploded and the child was hit in the stomach by shrapnel. Confidential documents from a medical source.

[1318] Article 3, Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Protocol V), 28 November 2003. Mali has been a State Party since 2009. The Commission notes that MINUSMA has specialized staff working with the Government of Mali on implementation of the Protocol.

[1319] UNMAS, Improvised explosive device lexicon.

the perpetrator of the attack. As it is not possible to use IEDs to target a specific objective, they represent an indiscriminate threat to the civilian population.

814. The Commission documented many cases in which members of the civilian population and national and international armed forces were harmed by IEDs, particularly in the regions of Kidal,[1320] Mopti,[1321] Gao[1322] and Ménaka.[1323] MINUSMA recorded 877 IED-related incidents in Mali between 2013 and the end of 2019, in which 248 civilians died and 421 were injured, 72 MINUSMA peacekeepers died and 399 were injured, and 209 members of the Malian Armed Forces were killed and 472 were injured.[1324] IED incidents increased sharply between 2012 and 2018, rising from 34 to 201 incidents a year. The majority of the attacks took place on the major highways between cities, in particular on the Mopti-Sévaré-Douentza-Gao, Gao-Anéfis-Kidal-Aguelhok and Timbuktu-Goundam roads.

815. Prior to the signing of the 2015 Peace and Reconciliation Agreement, most IED incidents occurred in the Kidal and Gao regions (including Ménaka). Between June 2015 and January 2018, the Kidal and Gao regions continued to be the most severely affected, although cases were on the rise in the Timbuktu, Mopti and Ségou regions. Since 2018, Mopti has been the worst affected region.[1325]

[1320] See case No. CEI69.

[1321] For example, the Commission was able to confirm that, on 2 April 2017, two young Fulani cattle herders aged 13 and 14 were killed by an IED in the commune of Mondoro while following their animals. Confidential documents from a medical source.

[1322] The cases documented by the Commission include: (1) On 10 October 2016 in Koima-Gao, two students aged 16 and 18 were injured by explosive devices and referred to the hospital in Gao. The 18-year-old died from a chest wound; (2) On 30 September 2017, in the Sosso-Koira neighbourhood of Gao, a 16-year-old student was hospitalized after being injured by an explosive device while unloading a truck; (3) On 18 December 2017, at approximately 12.30 p.m., near the Firoune camp in the city of Gao, two young people aged 15 and 18 died in an IED blast. Confidential documents from a medical source.

[1323] Testimonies Nos. 419, 420 and 446. For example, on 20 July 2017, on the Ménaka-Ansongo road, a vehicle struck a mine, killing one soldier and one civilian and injuring two civilians. All four victims were Gao residents and were between 20 and 50 years old. Confidential documents from medical sources.

[1324] Annex 4, Statistics on incidents involving explosives and explosive remnants of war recorded by MINUSMA.

[1325] According to the documentation in the Commission's possession, civilian casualties from IED incidents on the roads in the Mopti region increased in early 2018. For example, two passenger vehicles carrying 26 and 22 people struck IEDs on 25 January 2018 and 9 February 2018, respectively. The first attack killed 26 people, while the second killed 6 people and injured 8.

3. Responsibility for the use of improvised explosive devices

816. While the specific perpetrators and sponsors of the placement of IEDs on major highways often remain unknown, the Commission has reasonable grounds to believe that the extremist armed groups are responsible for the majority of the incidents. The Commission notes that extremist armed groups have in fact claimed responsibility for some of the IED attacks against the defence and security forces and foreign and international forces.[1326] The Commission also observes that IED use is one of the techniques employed by the extremist armed groups in Mali (and in other countries in the region) and that they teach some of their recruits how to make the devices.[1327] The Commission notes, however, that the materials needed to make IEDs have also been found in the homes of members of the armed groups that are signatories to the Peace and Reconciliation Agreement, suggesting that they also have the capacity to make them.[1328]

4. Consequences on the civilian population

817. The Commission noted that IED explosions have a profound physical and psychological impact on the victims. Those who are not killed in the explosion are frequently maimed. The Commission's forensic doctor documented many cases in which IED victims, some of them extremely young, were severely injured, maimed or lost limbs, and were left with permanent functional disabilities and serious psychological effects.

818. For the civilian population, IEDs create an ongoing climate of terror and have a significant socioeconomic impact. The IED threat makes it extremely dangerous for people to go to the farm, to move around to sell their wares, to travel to school or to go a hospital, thus restricting their mobility. While MINUSMA attempts to protect the population by conducting information and awareness-raising campaigns, the widespread use of IEDs by the extremist armed groups poses an ongoing danger to the civilian population in the region, particularly children.[1329]

(D) Attacks against MINUSMA

819. MINUSMA was established by the Security Council in its resolution 2100 (2013) of 25 April 2013 to support the political process in Mali and help to stabilize the country.[1330] Since the signing of the 2015 Peace and Reconciliation Agreement, it has been working to support the implementation of the political and institutional reforms provided for by the Agreement.[1331] Its personnel consists of approximately 13,000 soldiers, almost 2,000 police officers, and civilians. The Mission has gradually

[1326] See, for instance, case No. CEI85; Case No. CEI67; See also annex 2, Table of attacks against MINUSMA – August 2013–January 2018.

[1327] See, for example, Le Monde, Les confidences d'"Ibrahim 10", djihadiste au Sahel, 25 February 2019.

[1328] See case No. CEI42 (explosives found in the homes of HCUA members shortly after an attack against MINUSMA).

[1329] MINUSMA, La population de Kidal sensibilisée sur les dangers des restes d'explosifs de guerre et engins explosifs improvisés, 21 July 2017; Report of the Secretary-General on the situation in Mali (S/2016/1137), 30 December 2016, para. 34.

[1330] Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)); Security Council resolution 2164 (2014) of 25 June 2014 (S/RES/2164 (2014)).

[1331] Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)); Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)); Security Council resolution 2391(2017) of 8 December 2017 (S/RES/2391 (2017)); Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)); Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019)).

deployed throughout Mali and now has bases in the localities of Aguelhok, Ansongo, Bamako, Ber, Diabali, Douentza, Gao, Goundam, Kidal, Ménaka, Mopti, Tessalit and Timbuktu.[1332]

820. Since its establishment, MINUSMA has had its personnel and bases attacked on many occasions and has suffered greater loss of life than any other United Nations peacekeeping mission. By early June 2020, 209 MINUSMA personnel had lost their lives and hundreds more had been injured in various attacks against the Mission.

821. In the course of its investigations, the Commission documented a total of 281 attacks carried out against MINUSMA property and personnel between 1 July 2013, the date the Mission was established, and 19 January 2018, the end of the Commission's temporal mandate. In coordination with MINUSMA, the Commission compiled information on all of those attacks in a table, indicating, inter alia, the date and location of the attack, a brief description of what happened, the number and status of the victims and the alleged perpetrators.1333 It investigated 16 of the attacks, which are representative of the array of challenges facing MINUSMA.[1334]

[1332] See MINUSMA, military deployment map 2018.

[1333] See annex 2, Table of attacks against MINUSMA – August 2013–January 2018.

[1334] Case No. CEI39 (on 23 October 2013, a car bomb attack on a MINUSMA outpost in Tessalit killed two Chadian peacekeepers and two children and injured six Chadian peacekeepers and three civilians. AQIM claimed responsibility for the attack); Case No. CEI40 (on 14 December 2013, a car bomb attack against the Senegalese contingent of MINUSMA and the Malian Armed Forces positioned in front of BMS in Kidal killed two peacekeepers from the Senegalese battalion of MINUSMA. AQIM claimed responsibility for the attack); Case No. CEI54 (on 3 October 2014, nine peacekeepers from the Niger contingent of MINUSMA were killed during an attack on their convoy by members of AQIM, 15 km from the village of Indélimane, Ménaka cercle); Case No. CEI41 (on 7 October 2014, the MINUSMA camp in Kidal was the target of a mortar attack that killed one MINUSMA Senegalese peacekeeper and wounded three others); Case No. CEI42 (on 18 December 2014, in Aguelhok, a MINUSMA vehicle hit an anti-tank mine, seriously injuring the three Chadian peacekeepers in the vehicle); Case No. CEI55 (on 15 April 2015, a car bomb attack against the MINUSMA camp in Ansongo killed 2 civilians and seriously injured 17 others, as well as 9 peacekeepers from the Niger battalion of MINUSMA. Al Mourabitoun claimed responsibility for the attack); Case No. CEI71 (on 2 July 2015, six peacekeepers of Burkina Faso were killed in an attack on their convoy by AQIM, 45 km south of Timbuktu); Case No. CEI65 (on 28 November 2015, 2 Guinean peacekeepers and 2 international contractors from MINUSMA were killed and 9 peacekeepers were injured, and 11 other peacekeepers and 2 MINUSMA civilian personnel also suffered injury in a mortar attack on Kidal camp by Ansar Eddine); Case No. CEI66 (on 12 February 2016, 7 Guinean peacekeepers were killed and 19 others wounded in a complex attack on Kidal camp by members of Ansar Eddine); Case No. CEI67 (on 18 May 2016, six Chadian MINUSMA peacekeepers were killed and two others were injured when their vehicle hit an IED and exploded. Ansar Eddine claimed responsibility for the attack); Case No. CEI85 (on 29 May 2016, five Togolese peacekeepers were killed in an attack on their convoy by armed men probably belonging to the Macina katiba); Case No. CEI76 (on 31 May 2016, a Chinese peacekeeper and a civilian contractor were killed and many other MINUSMA personnel were injured in a double attack on MINUSMA and MINUSMA subcontractors in Gao by members of Al Mourabitoun); Case No. CEI77 (on 29 November 2016, the group Al Mourabitoun attacked Gao airport using two vehicles that were disguised as United Nations vehicles and carrying explosive devices, killing a national of the Barkhane force and destroying MINUSMA property); Case No. CEI68 (on 8 June 2017, a simultaneous attack on the MINUSMA base and the "Uranus" outpost of the Guinean battalion of MINUSMA in Kidal killed four Guinean peacekeepers and wounded two others. JNIM claimed responsibility for the attack); Case No. CEI86 (on 14 August 2017, a peacekeeper from the Togolese contingent of MINUSMA and a soldier from the Malian Armed Forces were killed in an attack on the MINUSMA camp in Douentza); Case No. CEI75 (on 14 August 2017, five Malian MINUSMA contractors and one soldier of the Malian Armed Forces were killed in an attack on the MINUSMA camp in Timbuktu by armed men, probably members of JNIM).

1. Responsibility for attacks against MINUSMA

822. Extremist armed groups operating in Mali (including MUJAO, AQIM, Al Mourabitoun, Ansar Eddine, the Macina katiba and JNIM) have claimed responsibility for a significant proportion of the attacks against MINUSMA.[1335] Although no one has claimed responsibility for the other attacks, the Commission has reasonable grounds to believe that the vast majority of them were committed by the extremist armed groups, given the modus operandi, the areas in which they took place and the weapons used.

823. The rationale used by the extremist armed groups to justify their attacks is that they wish to expel "foreigners" from Mali, including MINUSMA, which they perceive as a military ally of the Government of Mali, and the French forces, which they appear to consider a "legitimate" target.[1336] The presence of MINUSMA (and more generally of international forces) in the north and in the central part of Mali is also perceived by the armed groups, especially the extremist armed groups, as an obstacle to their ability to control and collect charges on major highways, which constitutes a major source of their income.[1337] The attacks against MINUSMA are thus part of a strategy to confine the United Nations forces to their bases by making it dangerous for them to move around, and to undermine their credibility in the eyes of the local people to further discourage cooperation with them. Lastly, the attacks provide them with an opportunity to steal weapons, which are then reused in the armed conflict or sold to other armed groups.

824. While most of those attacks were carried out by the extremist armed groups, the Commission has reasonable grounds to believe that in some instances the perpetrators received some form of assistance from local people or even from members of the armed groups that are signatories to the Peace and Reconciliation Agreement,[1338] owing to ideological support for the attacks or fear of reprisals. In a minority of cases, there is evidence to suggest some level of complicity by MINUSMA personnel.[1339]

2. Complexity of the analysis of the legal status of MINUSMA

825. Under international law, peacekeeping missions, in the proper sense of the term, benefit from protection against attacks similar to that of civilians. Like civilians, members of missions may

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[1335] See annex 2, Table of attacks against MINUSMA – August 2013–January 2018, which contains information on those allegedly responsible or those claiming responsibility for each of the 281 attacks.

[1336] See, for example, the press release from Sultan Ould Badi justifying the attack of 14 December 2013 as "a response to the African countries that sent soldiers to support François Hollande's fight in the land of Islam" (Le Parisien, Mali: l'attentat contre les soldats de l'ONU revendiqué par un jihadiste du MUJAO, 14 December 2013). See also the 16-minute video by Ansar Eddine in which it claims responsibility for the attack of 12 February 2016 against the MINUSMA base in Kidal and calls attention to the circumstances of the French and international military intervention in Mali. Confidential document of MINUSMA.

[1337] In particular, through income from the taxation of licit goods (food, oil and cigarettes) and illicit goods (arms, ammunition, drugs, ivory and animals). Confidential document of MINUSMA.

[1338] For instance, when the assailants manage to disappear immediately after attacking bases near the cities of Kidal or Timbuktu, or when they show no signs of fatigue during an attack in the middle of the desert.

[1339] For instance, when the assailants demonstrated detailed knowledge of the date, time and route of a MINUSMA convoy, of the inside of a MINUSMA camp or of MINUSMA security protocols and defence mechanisms); See, for example, testimony No. 432.

nonetheless lose such protection if they take a direct part in hostilities.[1340] This principle is enshrined in the Rome Statute of the International Criminal Court (ICC), which makes it a war crime to intentionally direct attacks against peacekeeping missions "as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict".[1341] The participation of a peacekeeping mission in an armed conflict is therefore a crucial factor in determining the legality or illegality of an attack against the mission.

826. While there is no doubt that attacks targeting MINUSMA civilian and police personnel (who by virtue of their functions and actions do not take a direct part in the conflict) and indiscriminate attacks against camps housing such personnel (for example, with mortars or booby-trapped vehicles) constitute war crimes, attacks directed exclusively against MINUSMA military personnel present legal complexities. As indicated above, how such attacks are classified will depend on whether MINUSMA troops were participating in the hostilities at the time of the attack,[1342] or on the nature of the military operations of MINUSMA, which could make it a party to the non-international armed conflict.

827. To that end, the Commission carefully reviewed, inter alia, the relevant Security Council resolutions;[1343] the Secretary-General's bulletin on the applicability of international humanitarian law in peacekeeping operations;[1344] the various mandates of MINUSMA, including taking active and robust measures to counter asymmetric attacks against civilians;[1345] the rules of engagement of MINUSMA;[1346] and the documents regulating cooperation between the Mission and the Malian Armed Forces, the French forces and the G5-Sahel force.[1347][1348][1349] The Commission also took into consideration elements such as the reference to the role of MINUSMA in the Peace and Reconciliation

[1340]Commentary on common article 3 of the Geneva Conventions, 2018, paras. 412-446; See also IRRC, Ferraro T., The applicability and application of international humanitarian law to multinational forces, No. 891/892, 2015, pp. 583-587; See, e.g., articles 8(2)(b)(iii) and 8(2)(e)(iii) of the Rome Statute, and article 4 (b) of the Statute of the Special Court for Sierra Leone.

[1341]Articles 8(2)(b)(iii) and 8(2)(e)(iii) of the Rome Statute.

[1342]According to the Secretary-General and some of the case law of international tribunals, the forces of peacekeeping missions would only be subject to international humanitarian law during their direct participation in hostilities. See, for example, ICC, *The Prosecutor v. Abu Garda*, case No. ICC 02/05-02/09, Hearing on the confirmation of charges (Pre-Trial Chamber I), 8 February 2010, paras. 78-89; ICC, *The Prosecutor v. Abdallah Banda et al,* case No. ICC 02/05-03/09, Hearing on the confirmation of charges (Pre-Trial Chamber), 7 March 2011, para. 59 et seq.; Special Court for Sierra Leone, *The Prosecutor v. Hassan Sasay,* case No. SCSL 04-15- T, judgment (Trial Chamber), 2 March 2009, paras. 213-235.

[1343]See, e.g., preamble to Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017): ("reaffirming the basic principles of peacekeeping, including consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate [...] paying tribute to the peacekeepers who risk, as well as lost, their lives in this respect, strongly condemning attacks against peacekeepers, underlining that these attacks may constitute war crimes under international law"); Security Council resolution 2164 (2014) of 25 June 2014 (S/RES/2164 (2014)); Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)), paras. 16(c), 16(f) and 17.

[1344]United Nations, Secretary-General's bulletin ST/SGB/1999/13 on observance by United Nations forces of international humanitarian law, para. 1, 6 August 1999.

[1345]See, e.g., Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)), paras. 17, 18, 20(a)(i), 20(a)(ii), 20(d) and 22(b); See also Human rights due diligence policy on United Nations support to non-United Nations security forces, 28 July 2011.

[1346]Confidential documents of MINUSMA.

[1347]Confidential document of MINUSMA.

[1348]Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)), para. 18. Confidential document of MINUSMA.

[1349]Confidential document of MINUSMA.

Agreement;[1350] the number of military personnel in the Mission;[1351] the existence of joint patrols by the Malian Armed Forces and MINUSMA (with separate command structures);[1352] and the circumstances of the use of force by the military forces of MINUSMA.[1353]

828. The Commission also observed on the ground the nature of the operations of MINUSMA and the layout of its bases, and interviewed several of its members. It was able to witness the extremely difficult conditions in which MINUSMA operates, particularly in northern and central Mali, where it faces asymmetric threats.[1354] The Commission also noted that some of the bases had been set up in close proximity to the French forces of *Operation Barkhane* or the Malian Armed Forces.[1355] While that proximity had obvious security advantages, it also added to the confusion in the status of each of the forces and increased the risk of MINUSMA being considered a legitimate target.[1356] For example, according to some witnesses, the base of the Barkhane forces in Kidal, located inside the MINUSMA camp, was used to fire mortars at the adversary, thereby increasing the risk of retaliatory mortar fire also hitting MINUSMA.[1357]

829. The analysis of all these elements has highlighted the profound complexity of the status of MINUSMA under international humanitarian law, the difficulty of determining its exact status in the Malian armed conflict, and the difficulty of accurately classifying the legal nature of the attacks against it. In this regard, the Commission notes that the risk of MINUSMA being perceived by armed groups as participating in the armed conflict has already been pointed out in at least one report.[1358]

830. The Commission considers this to be a matter of great legal and strategic importance that could be taken up by the Secretary-General. It notes that this complexity is not limited to MINUSMA and that the mandates and activities of modern United Nations peace missions make it increasingly difficult to distinguish between peacekeeping and peace enforcement missions.[1359]

3. Impunity of perpetrators of attacks against MINUSMA

[1350] Agreement on Peace and Reconciliation in Mali, arts. 56, 61.

[1351] Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)), para. 16; Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)), para. 12; Confidential documents of MINUSMA.

[1352] See Maliactu, Patrouilles conjointes de l'opération Barkhane, des FAMa et de la Minusma : Une initiative pour aider les forces maliennes à sécuriser les régions du nord, 20 October 2014; Bamako.com, Lutte contre le terrorisme au Sahel : plus de 400 djihadistes neutralisés en 3 ans, 15 July 2017.

[1353] The Commission only received information on a single case of use of force that might potentially fall outside the realm of self-defence. See Malijet, Suite aux accrochages entre le Mnla et la Minusma à Tanbakort : Les rebelles demandent "les excuses officielles et des indemnités", 26 January 2015; MINUSMA, La MINUSMA contrainte de faire usage de la force aujourd'hui à Tabankort, 20 January 2015.

[1354] Preamble to Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)).

[1355] For example in Kidal or Gao; Confidential documents of MINUSMA.

[1356] Confidential document of MINUSMA; See also Malijet, Suite aux accrochages entre le Mnla et la Minusma à Tanbakort : Les rebelles demandent "les excuses officielles et des indemnités", 26 January 2015.

[1357] Testimonies Nos. 415 and 432.

[1358] Confidential document of MINUSMA; Malijet, Suite aux accrochages entre le Mnla et la Minusma à Tanbakort : Les rebelles demandent "les excuses officielles et des indemnités", 26 January 2015.

[1359] See also United Nations peacekeeping operations principles and guidelines, 2008, pp. 20-21 and 37-38.

831. In its resolution 2480 (2019), the Security Council strongly condemned all attacks against MINUSMA and stressed the need for the perpetrators of such attacks to be brought to justice.[1360] The Commission notes that, in a large number of cases, the perpetrators of the attacks could not be identified or apprehended. However, even in cases where someone claimed responsibility for the attacks, the Malian authorities do not appear to have taken any judicial measures - such as the opening of an investigation or the issuance of an arrest warrant - to hold the perpetrators accountable.[1361] MINUSMA conducted judicial follow-up of some of those cases but without receiving satisfactory responses from the Malian authorities.[1362]

832. MINUSMA has not received any information as to the judicial actions taken in cases where its forces arrested suspects and handed them over to the Malian authorities, even though the agreement between the United Nations and the Government of Mali on the treatment of individuals apprehended and surrendered to Mali by MINUSMA has been amended to require the Government of Mali to inform MINUSMA without delay of the judicial fate of individuals surrendered to it by MINUSMA.[1363]

X. Legal classification

833. In this chapter, in accordance with its mandate, the Commission classifies the acts it established under international human rights law, international humanitarian law and international criminal law. To this end, the Commission starts by examining the context necessary for acts to be classified as international crimes.

(A) Context in which the crimes were committed

834. War crimes and crimes against humanity are distinguished from ordinary criminal offences by the context in which they are committed. To legally classify the abuses described in its report, the Commission must determine, inter alia, whether they were committed in the context of an armed conflict (war crimes) and/or as part of a widespread or systematic attack against the civilian population (crimes against humanity).[1364]

1. Existence of an armed conflict

835. As the violence in Mali does not involve two opposing State forces or their agents, the situation in Mali cannot be classified as an "international armed conflict".[1365] It may, be classified as a "non-

[1360] Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019)), para. 47.

[1361] The Commission notes, for example, that Abdou Aïssa (also known as Sultan Ould Badi), who claimed responsibility for the attack of 23 October 2013 against a MINUSMA post in Tessalit, the attack of 14 December 2013 against peacekeepers positioned in front of the BMS in Kidal, and the attack of 3 October 2014 against a patrol of the Niger battalion of MINUSMA in the Intekelit Valley, which killed 13 peacekeepers and 2 children, is now in the hands of the Algerian authorities. As far as the Commission is aware, no legal proceedings have been brought against him in Mali or in Algeria in respect of those events.

[1362] Reply dated 17 January 2020 from the Special Representative of the Secretary-General and Head of MINUSMA addressed to the commission of inquiry concerning judicial follow-up of attacks against MINUSMA.

[1363] Confidential document of MINUSMA.

[1364] See annex 1 - Notice on applicable law.

[1365] While Mali is officially supported by the G5 Sahel (Burkina Faso, Chad, Mali, Niger and Mauritania) and France, the evidence available to the Commission does not indicate that the anti-Government armed groups receive military support from a State.

international armed conflict" if a minimum level of organization of the parties and intensity of the violence is reached.[1366]

i. Level of organization of the parties

836. All the actors in the Malian conflict have already been described in detail earlier in this report.[1367] From a legal standpoint, the proliferation of groups, their fragmentation into small entities, their porosity,[1368] and the use of proxy groups by the Government make it difficult to analyse the situation.[1369] Nonetheless, it is clear from the Commission's investigations that the main armed groups documented in the present report were, at the time of the events, sufficiently organized to be considered parties to the conflict under international humanitarian law.

837. The Malian Armed Forces[1370] and foreign and international forces,[1371] which are presumed to be organized, as understood in international humanitarian law, [1372] do indeed have a clearly defined chain of command and the capacity to conduct coordinated military operations.

838. Each group member of CMA, which was founded in 2014, has a sufficient level of organization to be considered a party to the armed conflict, as understood in international humanitarian law. Indeed, MNLA, HCUA (founded in 2013) and MAA (MAA-CMA since the end of 2013) each has hundreds or even thousands of fighters, the financial means to pay those fighters and procure weapons, an established command structure, and the capacity to conduct planned and coordinated military operations and control conquered territories.[1373]

839. Each of the pro-Government local self-defence movements comprising the Plateforme (founded in 2014), namely Ganda Koy, Ganda Izo and FLN (between 2012 and 2015), GATIA and MAA-Plateforme (founded at the end of 2013), have hundreds of fighters, commanding officers that can cooperate with the defence and security forces or with foreign and international forces. Each therefore constitutes an armed group, as understood in international humanitarian law.[1374]

[1366] See annex 1 - Notice on applicable law.

[1367] See section on the main actors in the Malian conflict.

[1368] See, for example, the linkages between members of the signatory armed groups and extremist armed groups established by the Panel of Experts established pursuant to Security Council resolution 2374 (2017) on Mali; Final report of the Panel of Experts established pursuant to Security Council resolution 2374 (2017) on Mali (S/2018/581), 9 August 2018; Final report of the Panel of Experts established pursuant to Security Council resolution 2374 (2017) on Mali and extended by resolution 2432 (2018) (S/2018/581), 7 August 2019.

[1369] See section on the main actors in the Malian conflict.

[1370] See section on the main actors in the Malian conflict, Malian Armed Forces; See also ICC, Decision on confirmation of charges against Al Hassan of 13 November 2019, para. 207.

[1371] Notably the French forces of French *Operation Serval* (until 31 July 2014), then of *Operation Barkhane* (from 1 August 2014); those of the G5 Sahel, comprising the armed forces of Burkina Faso, Chad, Mali, Niger and Mauritania); and those of MINUSMA. With regard to MINUSMA, however, the level of organization of its forces does not necessarily make it a party to the conflict. This issue was discussed at length in the thematic section of the report on attacks against MINUSMA.

[1372] See annex 1 - Notice on applicable law; See also ICRC commentary on common article 3, 2018, para. 429.

[1373] See section on the main actors in the Malian conflict, MNLA, HCUA and MAA.

[1374] See section on the main actors in the conflict, GATIA, local self-defence movements (Ganda Koy, Ganda Izo, FLN) and MAA.

840. While some groups of CMA and the Plateforme evolved and restructured themselves after the signing of the 2015 Peace and Reconciliation Agreement, their organizational capacities have not changed significantly. The establishment of new groups, particularly as a result of internal tensions within MNLA, undoubtedly caused many fighters to break away from MNLA (and to a lesser extent the other CMA member groups) to join these new armed groups. However, that has not affected the organizational and operational capacities of the older groups. Each of the three new groups resulting from the splintering of MNLA, namely CPA (since 2014), CJA (established in October 2016) and MSA (established in September 2016), which itself split into two sub-groups, MSA-C (having joined CMA) and MSA-D (having joined the Plateforme), has hundreds of fighters, a clearly identified command structure, and sufficient financial and logistical capacity to be classified as an armed group, as understood in international humanitarian law.[1375]

841. The extremist armed groups that participated in the conquest of northern Mali in 2012, namely AQIM, Ansar Eddine and MUJAO, have clearly demonstrated that they are sufficiently organized to be considered "armed groups" under international humanitarian law. They have a clearly established structure and internal hierarchy, and sufficient military and financial capacity to conduct complex military operations, conquer territories and manage them over an extended period of time.[1376] Al Mourabitoun, established in August 2013, also has hundreds of fighters capable of carrying out complex, large-scale attacks, and a well-established command structure capable of leading operations and claiming responsibility for such operations. The Commission also notes that the groups that emerged after the signing of the Peace and Reconciliation Agreement, such as the Macina katiba, which emerged in January 2015, and the Gourma katiba (two fighting units of Ansar Eddine), ISGS, created in 2015 following the allegiance of an Al Mourabitoun commander to ISIL, and Ansar-al-Islam, created in 2016, each has an established command structure, hundreds of fighters capable of carrying out complex attacks, and spokespersons capable of claiming responsibility for operations conducted with a single voice. In this regard, all these groups constitute armed groups, as understood in international humanitarian law.[1377] The establishment, in March 2017, of JNIM, formed from the merger of Ansar Eddine (including its Macina and Gourma katibas), AQIM and Al Mourabitoun, marked a new effort in these groups’ quest to further coordinate their activities and to counter the growing influence of ISGS in Mali and the Sahel. While the movements that make up JNIM remain relatively autonomous in how they conduct their operations, the group has carried out many attacks against the Malian Armed Forces and international forces, and has claimed responsibility for said attacks in its own name. It can thus also be considered an armed group, as understood in international humanitarian law.[1378]

842. "Self-defence" groups, largely formed on a community basis (Dogon, Bambara, Bozo and Fulani), also emerged in the central part of Mali during the period covered by the Commission's mandate. While the degree of organization varies significantly from one entity to another, some of the groups of traditional hunters (Dozos), in particular Dogon and Bambara, investigated by the

[1375] See section on the main actors in the conflict, MNLA, MSA and annex 3 - Fact sheets on the main armed groups in the conflict in Mali since 2012.

[1376] See section on the main actors in the Malian conflict, Ansar Eddine, AQIM, MUJAO and Al Mourabitoun; See also ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15, sentencing judgment, 27 September 2016, para. 49; ICC, Decision on confirmation of charges against Al Hassan of 13 November 2019, paras. 206 and 210-214.

[1377] See section on the main actors in the conflict, Macina katiba and annex 3 - Fact sheets on the main armed groups in the conflict in Mali since 2012.

[1378] See section on the main actors in the Malian conflict.

Commission have become sufficiently developed, structured, organized and coordinated in recent years to be considered "armed groups", as understood in international humanitarian law. This applies in particular to the group of traditional Dogon hunters of Dan Na Ambassagou, which claims to have more than 5,000 fighters and has all the attributes of an organization or organized group, as understood in international humanitarian law.[1379] During its investigations, the Commission also identified an association of Bambara self-defence groups comprising traditional hunters (Dozos) from several communes in Macina cercle (Ségou region), which, according to the Commission’s sources, has thousands of fighters and a well-established command structure.[1380] Based on its standard of proof, the Commission also considers that the group of hunters from Macina referred to in the present report is sufficiently organized and armed to be considered an armed group, as understood in international humanitarian law.

ii. Intensity of the violence

843. The non-international armed conflict in Mali began with the attack on the Ménaka military camp (Gao region) by MNLA on 17 January 2012 and the attack on the Aguelhok and Tessalit camps (Kidal region) by a coalition of MNLA, Ansar Eddine, AQIM and MUJAO on 18 January 2012. Following those attacks, fighting increased between the Malian Armed Forces and the armed groups that had gradually been gaining control of the three regions of northern Mali. Following successive defeats suffered by the Malian Armed Forces, a group of their soldiers led by Captain Amadou Haya Sanogo carried out a mutiny that turned into a coup d'état in Bamako on 22 March 2012. That event caused further disruption within the Malian Army and precipitated the loss in three days of the three largest cities in northern Mali, namely Kidal, Gao and Timbuktu. On 6 April 2012, in Gao, MNLA declared the independence of "Azawad" which, in the interpretation of its leaders, included the three regions of northern Mali and part of the northern regions of Mopti and Ségou. The tension between MNLA and extremist armed groups quickly grew into clashes between the different groups. The armed conflict, which until then had pitted the armed groups against the Malian Armed Forces, started changing, pitting also MNLA against the extremist armed groups, with the groups gaining the upper hand in the conflict with MNLA, maintaining exclusive control over the major cities in the north throughout the rest of 2012.

844. The military offensive by Ansar Eddine, AQIM and MUJAO against the south of Mali led the French forces of *Operation Serval* to enter the fray on 11 January 2013, at the request of the Malian Government. Within a few weeks, with the help of the substantial resources deployed by France, the Malian defence and security forces managed to regain control of most of the major cities in the northern regions, with the exception of Kidal, which was taken over by MNLA. The French intervention and the retaking of most of the territory by the Malian Armed Forces also precipitated the deployment of nearly 6,000 men under the mandate of AFISMA; those men subsequently formed the bulk of the troops of MINUSMA (established in April 2013). The intensity of the violence between the Malian Armed Forces and the armed groups subsided somewhat in the period following those events, with the negotiations that led to the signing of the Ouagadougou preliminary agreement between the Government of Mali and MNLA and HCUA on 18 June 2013, and then with the signing of the Peace and Reconciliation Agreement between the Government of Mali, CMA and the Plateforme (known as the signatory groups) in May and June 2015. However, the tension between those groups remained high. There were sporadic

[1379] See part of the report on self-defence groups in the Ségou and Mopti regions.

[1380] Testimonies Nos. 299 and 550.

clashes between the parties to the Peace and Reconciliation Agreement, particularly between the armed groups of the Plateforme and those of CMA. Following "low-intensity" clashes between the two groups in 2016 and 2017, violent clashes broke out between GATIA and the CMA groups in June and July 2017 in the Kidal region.[1381]

845. Nonetheless, the intensity of the violence used by the extremist armed groups against the Malian, foreign and international armed forces did not diminish during the period of negotiations (2013-2015) or after the signing of the Peace and Reconciliation Agreement. On the contrary, in the face of repeated attacks by the groups against the defence and security forces and all those conflated with State representatives in the north and central parts of the country, the Malian State gradually withdrew from territories where it used to have some military and administrative presence. The violence by the extremist armed groups also intensified against the international forces, including MINUSMA, which suffered complex attacks, resulting in the death of many peacekeepers throughout the reporting period.[1382] In response, the Malian Armed Forces and their allies, including the French forces of *Operation Barkhane*, intensified their military operations against the extremist armed groups in the north and central part of the country with significant human, land and air military assets. Some "counter-terrorism" operations involved the use of proxy armed groups, such as GATIA and MSA-D, which were also attacked by the extremist armed groups in retaliation for their participation alongside government and international forces.

846. The period following the signing of the Peace and Reconciliation Agreement was also marked by a spike in violence against civilians during inter-communal clashes in the central part of the country. Those clashes were often the result of a cycle of violence and reprisals between the Fulani community, which was conflated with the extremist armed groups, and the Dogon and Bambara communities, which some self-defence groups and traditional hunters claimed to be protecting. Many battles also pitted extremist armed groups against self-defence groups. That violence, which exploded in 2018 and 2019, was already significant enough during the Commission's temporal mandate (January 2012 to January 2018) to leave hundreds of people dead and thousands injured or displaced.[1383]

iii. Conclusion of the Commission on the existence of an armed conflict in Mali

847. The Commission finds that there are reasonable grounds to believe that a non-international armed conflict began in Mali on 17 January 2012 and subsequently spread across, considering, inter alia, the above-mentioned facts; the seriousness of the attacks and the number of armed clashes; the large number of parties and fighters involved in the violence; the large number of victims of the fighting; the large number of civilians who had to flee the combat areas; the loss of control for a period by the Malian State over a significant portion of its territory; the heavy weaponry and wide variety of military equipment used by all the belligerents; the intervention of foreign forces - particularly the French - in the conflict; and the fact that the Security Council has taken an interest in the situation in Mali and has called for the deployment of international forces. The Commission notes that this is also the analysis of

[1381] Case No. CEI 70.

[1382] See section on attacks against MINUSMA.

[1383] According to Human Rights Watch, "Armed groups in central Mali killed hundreds of civilians in 2019, amounting to the deadliest year for civilians since Mali’s political and military crisis erupted in 2012". HRW, "How much more blood must be spilled": Atrocities committed against civilians in central Mali 2019, February 2020, p. 1.

the Government of Mali and the signatory groups to the Peace and Reconciliation Agreement,[1384]the Security Council,[1385] the Secretary-General,[1386]and various organizations specializing in international humanitarian law and human rights.[1387] This is also the analysis of ICC judges, as reflected in the two cases dealing with the situation in Mali.[1388]

848. The Commission also believes that the non-international armed conflict that began on 17 January 2012 continued across the territory of Mali throughout the period covered by its mandate, considering, inter alia, the ongoing clashes between the armed groups of CMA and those of the Plateforme after the signing of the Peace and Reconciliation Agreement; the significant violations of the Agreement by all the signatories;[1389]the proliferation of organized armed groups during the period in question;[1390]the loss of control by the Government of Mali over a large portion of its territory and the elimination of many public services in various parts of the country following repeated attacks against its agents; the increased use of explosive devices on roads, rendering them impracticable; the steady increase in the number of civilian casualties since the signing of the Peace and Reconciliation Agreement; the continuous and massive flight of civilians from the centre of the country to safer regions or bordering countries; the spike in intercommunal violence in the central part of the country;[1391] the continued involvement of foreign forces and MINUSMA;[1392] and the adoption of resolutions by the Security Council under Chapter VII of the Charter of the United Nations.[1393]

[1384]The reference to war crimes, particularly in article 46 of the Peace and Reconciliation Agreement, means that the parties agree as to the existence of an armed conflict. Furthermore, part 1 of the agreement is entitled "Principles, commitments and foundations for a lasting settlement of the conflict".

[1385]Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)); Security Council resolution 2164 (2014) of 25 June 2014 (S/RES/2164 (2014)).

[1385]Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)); Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017)); Security Council resolution 2391 (2017) of 8 December 2017 (S/RES/2391(2017)); Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)); Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019)) making explicit reference to armed conflict and the application of international humanitarian law.

[1386]See all the reports of the Secretary-General on the situation in Mali, which can be accessed from the MINUSMA website.

[1387]See, for example, IHL Resource Desk for Mali, Legal brief on the legal classification of the situation in Mali and applicable law, October 2019; See also the reports of Amnesty International and Human Rights Watch which, without classifying the situation in Mali per se, classify some of the acts committed as of January 2012 as war crimes.

[1388]ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15, sentencing judgment, 27 September 2016, paras. 18 and 49; ICC, Decision on confirmation of charges against Al Hassan of 13 November 2019, paras. 193-227.

[1389]Final report of the Panel of Experts established pursuant to Security Council resolution 2374 (2017) on Mali (S/2018/581), 9 August 2018, paras 21-22; Report of the Secretary-General on the situation in Mali (S/2017/811), 28 September 2017, paras. 36 et seq.

[1390]ICG, Central Mali: An uprising in the making?, Africa Report No. 238, 6 July 2016, which explains that it is difficult today to distinguish between banditry, the actions of local self-defence groups and the actions of radical groups in the central part of Mali; See also HD, Adam Thiam, Centre du Mali, enjeux et dangers d'une crise négligée, March 2017, which explains that this confusion leads to a crystallization of tensions around an emerging "Fulani question".

[1391]Jeune Afrique, Oumar Aldjana "Nous avons créé un mouvement pour mettre fin aux exactions contre les peuls", 20 June 2016; RFI Afrique, Le CJA nouveau mouvement armé dans le nord du Mali, 11 October 2016; See also RFI Afrique, Tombouctou encerclée par le CJA, contre les autorités intérimaires, 3 March 2017.

[1392]Security Council resolution 2364 (2017) of 29 June 2017 (S/RES/2364 (2017));

[1393]Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)); Security Council resolution 2164 (2014) of 25 June 2014 (S/RES/2164 (2014)).

849. In conclusion, the Commission considers that at least one non-international armed conflict covering the entire territory of Mali started on 17 January 2012 and continued throughout the period covered by its mandate.

2. Analysis of the linkage between the crimes and the armed conflict and knowledge by the perpetrators of the crimes of the existence of the conflict

850. In order to be classified as a war crime, an act must be associated with an armed conflict. The analysis of the linkage must be, and was, carried out on a case-by-case basis.[1394] The cases selected and documented by the Commission have common features that lead it to believe that the vast majority of the abuses documented in the report were closely related to the hostilities and could therefore constitute war crimes. Indeed, the vast majority of the crimes documented by the Commission were committed by members of the Armed Forces or armed groups participating in the conflict; the crimes were committed while the perpetrators were performing their "official" duties as members of one of the armed groups; the victims of the crimes were civilians who the perpetrators conflated with the "opposing camp", or fighters belonging to the opposing camp but who were hors de combat at the time of the crime; the impugned acts occurred during fighting between the parties to the conflict or immediately before or after the fighting; the strategic objective of the crimes committed was generally to diminish or annihilate the opponent in the territories sought, or to punish individuals or the victim population for their support, real or perceived, of one of the parties to the armed conflict.

851. For an act to constitute a war crime, the perpetrator must also have knowledge of the factual circumstances establishing the existence of an armed conflict. As is the case with linkage, this element of a war crime must be, and was, analysed on a case-by-case basis. There are, however, factual indications that, in the majority of the cases documented by the Commission, the perpetrators of the crime in question were aware of the factual circumstances establishing the existence of an armed conflict. The Commission thus notes that the conflict, which began in northern Mali in January 2012 and rapidly spread to other parts of the country, has been covered extensively by the Malian and international media. The conflict, which has been going on for several years and has affected almost the entire territory of Mali, has caused thousands of deaths and the displacement of hundreds of thousands of people. It has also led to the withdrawal of the Malian State from several regions of the country, the control by armed groups of regions temporarily lost in conquered territories, and the intervention of regional and international forces in the country. In many communiqués in which they claimed responsibility for or denounced the attacks, representatives of the Armed Forces or of armed groups spontaneously used vocabulary specific to armed conflicts. Given these circumstances, the Commission considers that there are reasonable grounds to believe that the alleged perpetrators of the crimes were generally aware of the factual circumstances relevant to the establishment of the existence of an armed conflict.

[1393] Security Council resolution 2227 (2015) of 29 June 2015 (S/RES/2227 (2015)); Security Council resolution 2295 (2016) of 29 June 2016 (S/RES/2295 (2016)); Security Council resolution 2364 (2017) of 29 June 2017; Security Council resolution 2391 (2017) of 8 December 2017 (S/RES/2391(2017)); Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)).

[1394] See annex 1 - Notice on applicable law.

3. Existence of a widespread or systematic attack against the civilian population

852. As explained in more detail in the notice on applicable law, an act may be classified as a crime against humanity if it is committed as part of a widespread or systematic attack against a civilian population.[1395] Having analysed all the information at its disposal, the Commission considers that there are reasonable grounds to believe that, in the context of the armed conflict in Mali, at least two systematic or widespread attacks were directed against part of the civilian population.

i. Widespread or systematic attack by extremist armed groups against the civilian population

853. The Commission has reasonable grounds to believe that, during the periods when they controlled the cities of Timbuktu and Gao, the extremist armed groups of AQIM, Ansar Eddine and MUJAO[1396] committed a series of violent acts, including murder, torture, rape and other similarly inhumane acts against the civilian population of those cities, particularly women and girls. One of the aims of those violent acts was to force the population, including through violence, to adhere to and respect the social and ideological codes developed based on their radical interpretation of Islamic law. To that end, the extremist armed groups set up security (morality police or Hisbah), judicial (Islamic courts) and prison structures that contributed significantly to the commission of the above-mentioned crimes, based on the rules and codes issued by the groups. Those acts, taken as a whole, cannot be considered a mere aggregate of spontaneous or isolated acts; on the contrary, they reflect a well-established organizational policy. The Commission further notes that the policy was clearly articulated within the extremist armed groups and widely disseminated to the local population at public meetings and in the form of radio and video recordings.[1397]

854. Following the recapture of part of the country by the Malian and international armed forces, the attack against the civilian population by armed extremist groups continued. As part of the violence perpetrated against civilians in order to impose their social and ideological codes in the areas under their control, the extremist armed groups also targeted all members of the civilian population accused of supporting the Malian and international armed forces, in order to dissuade them from cooperating with those forces. They also targeted civilians accused of representing or supporting the Malian State in the central part of the country, as well as clerics and clan leaders deemed too moderate or opposed to their interpretation of Islam.

855. The Commission considers that, in addition to being systematic in nature, the attacks described above in pursuit of their common objective of establishing an Islamic State based on their interpretation of Islamic law and the holy war were also widespread in nature, given the scope of the crimes committed (in time and in space) by all of those groups, individually and collectively, particularly in the territories under their control.

[1395] See annex 1 - Notice on applicable law.

[1396] Which are sufficiently well organized to be classified as "organizations", within the meaning of article 7 of the Rome Statute; See section on the main actors in the Malian conflict.

[1397] See also ICC, Decision on confirmation of charges against Al Hassan of 13 November 2019, paras. 171-191.

856. In conclusion, the Commission has reasonable grounds to believe that extremist armed groups launched attacks against the civilian population at the start of the conflict in January 2012, which lasted throughout the Commission's temporal mandate.

ii. Widespread or systematic attacks by some self-defence groups against the Fulani civilian population

857. As indicated above, some self-defence groups, including the Dan Na Ambassagou group,[1398] and a group of traditional hunters (Dozos) from Macina cercle, exercise sovereign police and judicial powers in some localities in the Mopti and Ségou regions by conducting missions to protect and defend the population that are normally the prerogative of the military, the police and the gendarmerie.[1399] While their precise structure and cooperation with other self-defence groups in the region remains unclear, both groups are sufficiently structured to carry out organized attacks.[1400]

858. On 17 June 017, the Dan Na Ambassagou group attacked several Fulani hamlets in Koro cercle, killing at least 39 Fulani civilians and injuring many others.[1401] That attack marked the beginning of a widespread or systematic attack by the group against the Fulani civilian population in the Mopti region.

859. The Commission recalls that its temporal mandate ended on the date of its establishment, namely 19 January 2018, and that it therefore did not investigate cases that occurred after that date. It would, however, be artificial not to take into consideration acts that occurred after that date in order to classify the above-mentioned acts and to determine, in particular, the existence of the contextual element required for crimes against humanity.

860. The Commission takes note of several investigations, which it considered credible after verifying the methodology used, conducted by the United Nations and non-governmental organizations that attribute many mass abuses against Fulani civilians in the Mopti region to the Dan Na Ambassagou group.[1402] For example, the Human Rights and Protection Division of MINUSMA documented systematic attacks targeting members of the Fulani community accused of complicity with the armed groups in the Mopti and Ségou regions. It documented 58 attacks by people identified as Dozos against villages or parts of villages inhabited predominantly by members of the Fulani community, leading to

[1398] Which has thousands of members, a well-organized political and military structure and internal rules of conduct that come with penalties for violators.

[1399] Le Point : Afrique, "Mali-Youssouf Toloba : “Notre mouvement cible les malfaiteurs, pas une ethnie”, 12 December 2018; MINUSMA and OHCHR, Report on human rights abuses committed in the village of Koulogon-Peul, commune of Koulogon-Habe, Bankass cercle, Mopti region, 1 January 2019 (French), May 2019, para. 8.

[1400] See section on the main actors in the Malian conflict.

[1401] Case No. CEI 91.

[1402] Report of the Secretary-General on the situation in Mali (S/2017/866), 25 September 2018; MINUSMA and OHCHR, Report on human rights abuses committed in the village of Koulogon-Peul, commune of Koulogon-Habe, Bankass cercle, Mopti region, 1 January 2019 (French), May 2019; MINUSMA and OHCHR, Report on serious human rights violations committed during the attack on Sobane Da (Mopti region) on 9 June 2019 (French), 10 July 2019; HRPD, MINUSMA, Note on the trends of human rights violations and abuses, 1 January–31 March 2020, paras. 17-19 (French); HRW, "We used to be brothers", Self-defence group abuses in central Mali, 7 December 2018, p. 37; HRW, “Mali: Militias killed more than 75 civilians”, 18 December 2018; HRW, "How much more blood must be spilled": Atrocities committed against civilians in central Mali 2019, February 2020; HRW, “Mali: Army, United Nations fail to stop massacre”, 18 March 2020.

the death of at least 195 civilians, including 12 children and 7 women, and the disappearance of 14 people, including 4 children, as well as the forced displacement of at least 3,000 people.[1403] In a report issued in July 2019, the Division documented “at least 43 attacks in the communes of Madougou, Sangha and Diankabou alone” in 2018.[1404] Human Rights Watch documented "42 incidents of communal violence in the Mopti region [...] in which 202 civilians were killed, scores wounded, and dozens of villages destroyed". It noted that "26 of the incidents were allegedly committed by Bambara and Dogon self-defense groups against Fulani communities and left 156 Fulani civilians dead".[1405] In its report of February 2020, Human Rights Watch again described "dozens of attacks [...] from January through November 2019, during which at least 456 civilians were killed, and hundreds wounded [...] in more than 50 hamlets, villages and towns in the central part of Mali". According to the organization, "civilians were largely the targets of the attacks, including several that appeared well planned and organized."[1406] In its quarterly report for April 2020, the Human Rights and Protection Division of MINUSMA documented seven armed attacks that killed 72 members of the Fulani community in the first three months of 2020.[1407] It found, through its investigations, that the Dan Na Ambassagou group of Dogon traditional hunters was responsible for a significant number of abuses.[1408]

861. The Commission notes that it is clear from the various interviews given by the head of the military arm of Dan Na Ambassagou that he was fully aware of the extent of the massacres alleged to have been committed by his group. While he denies that he wanted to largely target civilians, he considers as an "accomplice of criminals, any person who shelters a criminal".[1409] The Commission also considers that the large number of civilian casualties, particularly of women and children, and the systematic nature of the pillaging and destruction of hamlets during those attacks confirm that the civilian population was indeed the main target of the attacks.

862. In the light of these elements, the Commission has reasonable grounds to believe that the attack launched on 17 June 2017 by the Dan Na Ambassagou group was part of a widespread or systematic attack against the civilian population in Koro cercle, and subsequently in the Mopti region, in retaliation for the acts of violence committed by extremist armed groups in the region.

[1403] MINUSMA and OHCHR, Report on human rights abuses committed in the village of Koulogon-Peul, commune of Koulogon-Habe, Bankass cercle, Mopti region, 1 January 2019 (French), May 2019, paras. 2-3.

[1404] MINUSMA and OHCHR, Report on serious human rights violations committed during the attack on Sobane Da (Mopti region) on 9 June 2019 (French), 10 July 2019.

[1405] HRW, "We used to be brothers", Self-defence group abuses in central Mali, 7 December 2018, p. 37;

[1406] HRW, "How much more blood must be spilled": Atrocities committed against civilians in central Mali 2019, February 2020, p. 1.

[1407] HRPD, MINUSMA, Note on the trends of human rights violations and abuses, 1 January–31 March 2020, paras. 16-19 (French).

[1408] Report of the Secretary-General on the situation in Mali (S/2018/866), 25 September 2018, para. 42; Report of the Secretary-General on the situation in Mali (S/2019/454), 31 May 2019, para. 30; MINUSMA and OHCHR, Report on human rights abuses committed in the village of Koulogon-Peul, commune of Koulogon-Habe, Bankass cercle, Mopti region, 1 January 2019 (French), May 2019, paras. 14-20; HRW, "How much more blood must be spilled": Atrocities committed against civilians in central Mali 2019, February 2020, pp. 2-3 and 16-18; HRPD, MINUSMA, Note on the trends of human rights violations and abuses, 1 January–31 March 2020, April 2020, para. 19 (French).

[1409] Le Point : Afrique, "Mali-Youssouf Toloba : “Notre mouvement cible les malfaiteurs, pas une ethnie”, 12 December 2018; See also HRW, "We used to be brothers", Self-defence group abuses in central Mali, 7 December 2018, p. 20 (quoting an unidentified Dogon militia leader, “There is the will to kill all Fulani”, [...] “They are all complicit - if they aren’t members of jihadists, then they are hiding them… no, you must eliminate them").

863. During its investigations, the Commission also documented several simultaneous attacks carried out against several hamlets in the villages of Diawaribougou, Niona Peuhl and Toguéré Wéré on 12 February 2017 by a group of traditional Bambara hunters from Macina cercle (Ségou region), in which 18 Fulani men, 1 girl and 1 boy were killed.[1410] However, despite its investigations, the Commission does not have sufficient information as to the group's responsibility for other similar attacks in the area. Accordingly, the Commission is unable to establish, in keeping with its standard of proof, that members of that group of Bambara hunters from Macina cercle carried out a widespread or systematic attack against the Fulani civilian population.

B. Typology of crimes committed by all parties to the Malian conflict

1. Extremist armed groups

i. Murder, violence to life and sentencing or execution without due process

864. The Commission's investigations revealed the countless murders and other forms of violence to life committed by extremist armed groups since 2012, in the context of the Malian armed conflict, against the Malian civilian population, foreigners and all those considered to be an obstacle to the achievement of their political and military goals.

865. As soon as they took control of the towns in the north of Mali, members of extremist armed groups set up a system of sanctions, including, in the most serious cases, execution, for persons accused of violating the rules imposed in accordance with the interpretation of Islamic law by courts which did not offer the judicial guarantees generally recognized as indispensable under international law. For example, on 29 July 2012, members of Ansar Eddine forced the population of the town of Aguelhok (Kidal region) to stone a couple to death for living together and having children out of wedlock.[1411] In addition, on 2 October 2012, a farmer who had been accused of murder and sentenced to death by an Islamic court was shot twice and killed in a square in Timbuktu in front of a large crowd.[1412]

866. The Commission documented several other murders of civilians in 2012, when armed groups controlled the northern regions of Mali.[1413] However, for reasons explained elsewhere in this report, it was not always possible to clearly attribute responsibility for those murders to extremist armed groups or to MNLA, given that witnesses could not easily distinguish among those groups at that stage of the conflict.[1414] For the same reason, it was not always possible to clearly attribute responsibility for a murder to a particular extremist armed group.

867. After the French armed forces intervened and the Malian Armed Forces recaptured the territory, the extremist armed groups went back into hiding and continued their campaign of killings with increased determination, targeting in particular civilians suspected of cooperating with foreign and

[1410]Case No. CEI 95.

[1411]Case No. CEI03.

[1412]Case No. CE06.

[1413]Case No. CEI16 (on 2 September 2012, MUJAO claimed responsibility for the execution of the Algerian vice-consul who had been captured with other Algerian diplomats in Gao a few months earlier); Case No. CEI33 (on 14 January 2013, during the attack on the city of Diabali, members of extremist armed groups killed a man who had attempted to flee after being arrested while he was out looking for food).

[1414]See, for example, case No. CEI31 (execution of at least 15 men at the well in Dungurua, in Ténenkou cercle, 18 March 2013).

international forces or with the Malian Armed Forces. For example, in mid-September 2014, a man suspected by AQIM of being an informant for the Malian Armed Forces and for the French forces was beheaded and his head was left at a market in Zouéra (Timbuktu region) a few days later.[1415] On 19 March 2015, members of AQIM shot and killed a man accused of working for the French forces and then beheaded him in front of people at a cattle market to dissuade them from cooperating with the international forces.[1416]

868. In the central part of the country, in areas under their control, members of extremist armed groups also killed civilians accused of not respecting their precepts. For example, at the end of 2015, in the village of Boulikessi (Douentza cercle), members of extremist armed groups killed a Fulani livestock farmer for not shortening his trousers as they had requested.[1417] They also killed many local authorities and influential individuals considered hostile to their interests. In particular, the Commission documented six murders of prominent local figures in the region of Mopti by members of extremist armed groups between October 2015 and December 2017.[1418] It also documented the murder of the imam of the village of Barkerou, Ségou region, by members of the Macina katiba on 13 August 2015.[1419]

869. Members of extremist armed groups also carried out targeted killings of members of the Dogon and Bambara communities, triggering an unprecedented wave of inter-community violence in central Mali. For example, in the region of Mopti, on 16 June 2017, armed men belonging to or associated with the Macina katiba killed a famous traditional Dogon hunter, prompting bloody reprisals by Dogon hunters from Koro cercle.[1420] In the region of Ségou, the murder of a Bambara shopkeeper in the village of Diawaribougou on 11 February 2017 by two alleged members of the Macina katiba led to deadly reprisals by local traditional Bambara hunters against a number of Fulani hamlets the following day.[1421]

870. Extremist armed groups also planted large numbers of improvised explosive devices along the roads of central and northern Mali with the main objective of killing members of the Malian Armed Forces or the foreign and international forces. However, many civilians were also killed by such devices while travelling on those roads.[1422]

871. In Bamako and Sévaré, extremist armed groups, in particular Al Mourabitoun, also carried out attacks on hotels and restaurants during which they sought to kill as many foreign civilians as possible, in order to terrorize foreign nationals in Mali and force them to leave. Such attacks included the attack on the bar-restaurant La Terrasse in Bamako on the night of 6 to 7 March 2015, which was attributed to Al Mourabitoun;[1423] the attack on the Byblos Hotel in Sévaré on 7 August 2015;[1424] the attack on the

[1415] Case No. CEI45.

[1416] Case No. CEI45.

[1417] Case No. CEI82.

[1418] Case No. CEI81.

[1419] Case No. CEI92.

[1420] Case No. CEI91. See also case No. CEI83 (on 18 July 2015, Fulanis belonging to or possibly associated with extremist armed groups killed six Dogon men from the commune of Mondoro during a dispute between Fulani cattle herders and Dogon farmers).

[1421] Case No. CEI95 (on 18 February 2017, armed men executed eight men and a child near the locality of Siraouma, in Niono cercle. The temporal and geographical proximity of those murders to the attack of 12 February 2017 suggested that the two incidents were related).

[1422] Case No. CEI69; See also section on improvised explosive devices.

[1423] Case No. CEI61.

[1424] Case No. CEI84.

Radisson Blu Hotel in Bamako on 20 November 2015,[1425]during which 29 civilians were killed; and the attack on Le Campement Kangaba on 18 June 2017, during which at least four civilians were killed by members of JNIM.[1426] Those attacks were, according to their perpetrators, carried out in response to the presence of foreign and international troops in Mali and to their support for the Malian Armed Forces, and are sufficiently related to the armed conflict to be considered in the present legal analysis.

872. The Commission also documented many attacks against Malian soldiers,[1427]some of which were targeted at soldiers who were hors de combat because they were wounded or for any other reason. Indeed, from the beginning of the conflict and throughout its duration, extremist armed groups executed Malian soldiers while they were hors de combat. For example, the Commission has reasonable grounds to believe that, during the final attack on the Aguelhok military camp (Kidal region) on 24 January 2012, members of Ansar Eddine and AQIM executed many Malian soldiers while they were hors de combat, either because they had been wounded or because they had laid down their arms.[1428] In January 2013, during the attacks on the cities of Konna (Mopti region) and Diabali (Ségou region), members of Islamist armed groups shot and killed wounded Malian Armed Forces soldiers.[1429]

873. Extremist armed groups have also attacked MINUSMA peacekeepers on a regular basis since 2013 and killed 146 of them during the period covered by the Commission’s investigations.[1430]

ii. Mutilation and other cruel treatment

874. The Commission has reasonable grounds to believe that, during the period in which they controlled the cities in northern Mali, in particular Timbuktu and Gao, members of extremist armed groups set up a system of sanctions in the form of punishments, including flogging and amputation, for anyone accused of violating the rules imposed by the groups in accordance with their interpretation of Islamic law. For example, in Timbuktu, on 19 June 2012, a man and woman accused of having had a child out of wedlock were sentenced to 100 lashes by an Islamic court judge and were each flogged by group members in front of a large crowd.[1431] On 16 September 2012, a man who had been accused of theft by a neighbour had his right hand amputated in accordance with a decision of the Islamic court of Timbuktu, which had been established by Ansar Eddine and AQIM.[1432] In Gao, during the period in which the city was controlled by MUJAO, the Islamic police also flogged or beat many people for reasons as diverse as not complying with the dress code, smoking cigarettes, having children out of wedlock, or listening to music. The Commission also documented 10 cases in which persons accused of theft had had their hands, feet or arms and legs amputated by MUJAO in Gao and Ansongo.[1433]

[1425]Case No. CEI96.

[1426]Case No. CEI96.

[1427]See, for example, case No. CEI78 (suicide bombing at the MOC camp in Gao on 18 January 2017).

[1428]Case No. CEI01. If it were established that all the soldiers from the Aguelhok camp found by the AQIM and Ansar Eddine fighters were executed during the attack, those executions, in addition to being war crimes of murder, could also constitute the war crime of denying quarter under article 8 (2) (e) (x) of the Rome Statute.

[1429]Case No. CEI28 (during the battle for Konna on 10 and 11 January 2013, some soldiers were executed while wounded) and case No. CEI33 (during the battle for Diabali, members of Ansar Eddine and AQIM executed wounded soldiers while they were sleeping in their vehicles).

[1430]See section on attacks against MINUSMA; See also annex 2, Table of attacks against MINUSMA (August 2013–January 2018).

[1431]Case No. CEI03.

[1432]Case No. CEI06.

[1433]Case No. CEI17.

iii. Rape, forced marriage and sexual slavery

875. The Commission considers that there are reasonable grounds to believe that, in the context of the armed conflict, members of Ansar Eddine, AQIM and MUJAO carried out systematic or widespread rape of women and girls during the period in which they controlled the Timbuktu and Gao areas.

876. For example, in the Timbuktu area, between 1 or 2 April 2012 and 28 January 2013, members of Ansar Eddine and AQIM committed rape, mainly gang rape In particular, the Commission documented 17 cases of women and girls raped by members of the Islamic police or by the Timbuktu morality police using an identical method: victims were arrested under the pretext that their clothing did not adequately cover their heads or bodies, were taken to the Islamic police station, and were then raped, often repeatedly and by multiple men. The Commission also documented nine cases of rape committed in the context of “forced marriages”, in which victims were forced to “marry” members of armed groups, who then raped them repeatedly, sometimes with the participation of other men.[1434]

877. An identical phenomenon occurred in the city of Gao during the period in which it was controlled by MUJAO, from the beginning of April 2012 to the end of January 2013. The Commission documented dozens of cases of rape, including at least 11 cases in which the victims identified their attackers as members of MUJAO. As in Timbuktu, the widespread rape took place either when the victims were kidnapped by members of the Islamic police of MUJAO, or in the context of forced marriages with members of that armed group.[1435] The Commission also received reports that, during the short period in which MUJAO controlled Ménaka at the end of 2012, rapes attributable to members of that group or to armed men sympathetic enough to the group to be able to operate freely in the town while carrying weapons had occurred.[1436]

878. Cases of rape were also reported in the context of the attack carried out by extremist groups in the southern part of Mali in January 2013. For example, the Commission gathered credible information concerning three cases of rape involving three women and a 14-year-old girl, which were allegedly committed by Ansar Eddine and/or AQIM during the attack on the city of Diabali on the night of 13 to 14 January 2013.[1437] The Commission also documented multiple cases of rape in the region of Mopti, during the period in which extremist armed groups were present in Konna, in January 2013. At least one of those cases could be attributed to members of one of the extremist armed groups that were present during the battle for Konna (Ansar Eddine, AQIM or MUJAO).[1438]

879. The Commission reiterates that the cases of rape attributed to those groups likely account for only a fraction of all cases of rape, as most victims could only give general physical descriptions of their attackers without necessarily being able to link them to a specific armed group.

iv. Hostage-taking

[1434] Case No. CEI07.

[1435] Case No. CEI19.

[1436] Case No. CEI20.

[1437] Case No. CEI33.

[1438] Case No. CEI30; See also case No. CEI82 (in August 2015, five armed men wearing the traditional clothing of members of extremist armed groups raped four women on a farm between Bandiagara and Sévaré and then forced them to pray, and other armed men raped a woman after executing her husband for not shortening his trousers in accordance with their interpretation of Islam).

880. The Commission has reasonable grounds to believe that extremist armed groups kidnapped many people and threatened to kill them if the State of Mali or other States or international organizations did not capitulate to their demands. For example, on 5 April 2012, MUJAO kidnapped seven Algerian diplomats, including the consul Boualem Saïes and the vice-consul Taher Touati, who was executed on 2 September 2012 in response to the refusal of Algeria to release certain detainees belonging to AQIM.[1439] In addition, Songalo Koné, President of the Court of Niono (Ségou region), Mamadou Diawara, a brigade commander from Guiré, Makan Doumbia, the prefect of Ténenkou and the journalist Issiaka Tamboura were kidnapped by members of the Macina katiba, who demanded “the application of Sharia law and Qu’ranic law and the release of certain prisoners” in exchange for their release.[1440]

v. Imprisonment and other severe deprivation of physical liberty

881. The Commission notes that, in the context of the crimes mentioned above, extremist armed groups, in a widespread or systematic manner, imprisoned their victims or otherwise deprived them of physical liberty. The victims of such imprisonment or other forms of deprivation of physical liberty included persons who were tried by Islamic courts during the period in which extremist armed groups controlled the cities of Timbuktu, Gao and Kidal,[1441] many women and girls who had been detained for violating the dress codes imposed by the groups,[1442] and all those who had been taken hostage or kidnapped by the groups.[1443]

vi. Attacks against personnel and property of humanitarian assistance or peacekeeping missions using the distinctive emblems of the Geneva Conventions

882. The Commission documented some of the many attacks by extremist armed groups on employees of the Red Cross and other humanitarian organizations. In one incident, which took place on 30 March 2015, an ICRC truck carrying medical equipment from Niamey, Niger to the hospital in Gao was attacked by members of MUJAO, who killed the driver and injured a staff member of the ICRC country office in Mali.[1444]

883. The Commission also documented 281 attacks against MINUSMA personnel and bases that were carried out during its temporal mandate, mostly by extremist armed groups. A combined total of 146 MINUSMA personnel were killed in those attacks, and hundreds more were injured. Some attacks involving vehicle-borne improvised explosive devices also resulted in the death or injury of large numbers of civilians who happened to be in the vicinity. At least some of the attacks, including those in which civilians were killed, indisputably constitute war crimes.[1445]

[1439] Case No. CEI16.

[1440] Case No. CEI93; See also case No. CEI57 (kidnapping of three people working with ICRC on the road to Kidal by Ansar Eddine, which, in exchange for their release, initially demanded the release of prisoners who were being held by the French forces of *Operation Barkhane*).

[1441] Case No. CEI03; Case No. CEI06; Case No. CEI17.

[1442] Case No. CEI07; Case No. CEI18; Case No. CEI19.

[1443] Case No. CEI15; Case No. CEI93; Case No. CEI57.

[1444] Case No. CEI57 (kidnapping by MUJAO of four ICRC staff and a veterinarian from another organization on the Gao-Kidal road on 8 February 2014, and kidnapping by members of Ansar Eddine of three people working with ICRC on the road to Kidal on 16 April 2016).

[1445] One example is the attack on the MINUSMA outpost in Tessalit on 23 October 2013, in which members of AQIM killed two Chadian peacekeepers and two children with a vehicle-borne improvised explosive device (case No. CEI39). Another is the attack on the camp of

vii. Killing or wounding treacherously

In several documented cases, extremist armed groups carried out attacks using vehicles belonging to humanitarian organizations.[1446] Al Mourabitoun also treacherously killed and wounded fighters on the opposing side. On 29 November 2016, members of Al Mourabitoun drove vehicles that they had painted to look like United Nations vehicles and loaded with explosives past military checkpoints and detonated the explosives near *Operation Barkhane* and United Nations forces.[1447]

viii. Using, conscripting or enlisting children

884. The Commission has reasonable grounds to believe that the armed groups MUJAO, AQIM and Ansar Eddine recruited children under 15 into their ranks, either forcibly or in exchange for payment, between February 2012 and January 2013.[1448]

ix. Outrages upon personal dignity

885. Members of extremist armed groups subjected a number of people, including deceased persons, to humiliating or degrading treatment or other violations of their dignity.[1449] In particular, the Commission documented several cases in which civilians and Malian Armed Forces soldiers hors de combat were executed, decapitated and had their bodies publicly displayed.[1450]

x. Pillaging

866. While most of the pillaging in Gao in the days following the capture of the city in 2012 was carried out by MNLA fighters, the Commission noted that members of extremist armed groups were

the MINUSMA peacekeepers from Niger on 15 April 2015, in which a 10-year-old child and a MINUSMA contractor were killed and 14 boys, 3 women and 9 peacekeepers were seriously injured. Al Mourabitoun claimed responsibility for that attack (case No. CEI55). Further examples are the attack on the Byblos hotel in Sévaré, in which members of Al Mourabitoun executed four civilian contractors of MINUSMA (case No. CEI84), and the attack on the MINUSMA camp in Timbuktu on 14 August 2017, in which JNIM members killed six unarmed civilian contractors of MINUSMA (case No. CEI75). For a general overview, see the section on attacks against MINUSMA.

[1446] Members of Al Mourabitoun equipped a vehicle stolen from the non-governmental organization International Rescue Committee with an explosive device and used it to attack the camp of the MINUSMA peacekeepers from Niger on 15 April 2015 (case No. CEI55).

[1447] Case No. CEI77.

[1448] Cas No. CEI33. For example, children under 15 enlisted by MUJAO in the Gao region from 2012 participated, either willingly or by force, in the battle for Konna, in the Mopti region, in January 2013, and some lost their lives. (Case No. CEI18; Case No. CEI28). Children were seen in the ranks of extremist armed groups in Diabali in January 2013 (case No. CEI33).

[1449] In accordance with international case law, the word "persons" as used in Article 8(2)(c)(ii) of the Rome Statute can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. The relevant aspects of the cultural background of the victim are to be taken into account.

[1450] See for example case No. CEI12 (on 31 March 2012, during the capture of Gao by Ansar Eddine and MNLA, a soldier was decapitated and his head hung on the wall of the military camp, alongside other heads); Case No. CEI28 (on 10 January 2013, during the battle for Konna, a number of wounded soldiers were executed and several of their bodies were reportedly defiled by members of extremist armed groups); Case No. CEI45 (in mid-September 2014, a man suspected by AQIM of being an informer for the Malian Armed Forces and the French forces was beheaded, and his head was displayed in a market in Zouéra (Timbuktu region) a few days later); Case No. CEI45 (on 19 March 2015, members of AQIM shot and killed a man accused of working for the French forces and then publicly beheaded him in a market in order to dissuade people from cooperating with the international forces).

also implicated in some incidents.[1451] The Commission also documented the pillaging of several houses in Ménaka by MUJAO fighters between November 2012 and January 2013, when the group was in control of the city.[1452]

Conclusion

887. In the light of the foregoing, the Commission considers that there are reasonable grounds to believe that extremist armed groups, including Ansar Eddine, AQIM, MUJAO, the Macina katiba and Al Mourabitoun, directed a widespread or systematic attack against the civilian population of Mali, which included murder; imprisonment or other severe deprivation of physical liberty; torture; rape, sexual slavery and other forms of sexual violence; and other inhumane acts constituting crimes against humanity.[1453]

888. The Commission considers that those killings – which took various forms and were directed at civilians from Mali and abroad as well as soldiers hors de combat – constitute war crimes, as do the acts of mutilation and other cruel treatment and the acts of rape and other forms of sexual violence.[1454] The Commission also considers that Ansar Eddine, AQIM and MUJAO committed further war crimes by sentencing people to corporal punishment through their own policing and judicial administration systems and carrying out executions without previous judgments pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable under international law.[1455]

889. In some of those cases, members of AQIM also committed the war crime of outrages upon personal dignity by decapitating and publicly displaying parts of the bodies of deceased individuals.[1456] There are reasonable grounds to believe that extremist armed groups committed war crimes by recruiting children under the age of 15 and having them participate actively in hostilities; taking civilians and soldiers hors de combat as hostages; carrying out attacks on personnel, property or facilities bearing the distinctive emblems of the Geneva Conventions; and carrying out attacks on personnel, property or facilities involved in a peacekeeping mission in accordance with the Charter of the United Nations.[1457] There are also reasonable grounds to believe that members of MUJAO committed the war crime of pillaging.[1458]

2. Malian defence and security forces

[1451] Case No. CEI13.

[1452] Case No. CEI22.

[1453] Articles 7(1)(a), (e), (f), (g) and (k) of the Rome Statute.

[1454] Articles 8(2)(c)(i) and (ii) and 8(2)(e)(i) and (vi) of the Rome Statute.

[1455] Article 8(2)(c)(iv) of the Rome Statute. The Commission recalls that the intention of controlling the population, even for the purposes of enforcing an extreme ideology, has no bearing on the assessment of the criminality of an act of violence. An act of violence cannot be considered as a lawful element of a judgment if, as in the cases documented, the institution issuing the decision is not a regularly constituted court; if the proceedings do not afford the judicial guarantees which are generally recognized as indispensable under international human rights law; if the laws have not been duly promulgated or are applied retroactively; or if the penalty imposed is an act prohibited under international human rights law. See also ICC, Decision on the confirmation of charges against Al Hassan, 13 November 2019, paras. 182, 242–250, 417 – 422, 424, 426–428, 482–483 and 492.

[1456] Article 8(2)(c)(ii) of the Rome Statute.

[1457] Articles 8(2)(e)(ii), (iii), (iv), (v), (vi) and (ix) of the Rome Statute.

[1458] Article 8(2)(e)(v) of the Rome Statute.

890. In its report, the Commission documented crimes committed in 2012 and 2013 by the defence and security forces and by the armed forces loyal to CNRDRE and Captain Sanogo, in connection with the coup d'état, the counter-coup, and the mutiny in Kati.

i. Crimes committed by the Malian Armed Forces

(a) Murder and other acts of violence to life

891. The Commission documented many cases of murder and other acts of violence to life committed against civilians and persons hors de combat by the defence and security forces, in particular the Malian Armed Forces, in the context of the armed conflict.

892. Initially, when armed groups seized control of the northern areas of the country, the killings were directed particularly at members of the Tuareg and Arab communities who were conflated with members of armed groups that had triggered the hostilities. For example, on the night of 8 to 9 September 2012, 16 Mauritanian and Malian preachers, most of whom were Arabs, were executed by Malian Armed Forces soldiers from the military camp in Diabali (Ségou region), who suspected them of belonging to extremist armed groups.[1459] There were also cases of Tuareg members of the Malian Armed Forces being murdered because they were suspected of colluding with the enemy. Such was the case of three Tuareg gendarmes who were arrested and executed by the Malian Armed Forces on 2 April 2012.[1460]

893. When the Malian Armed Forces regained control over the northern regions of Mali from early January 2013, they murdered many Tuaregs, Arabs and Fulanis who they conflated with members of armed groups.[1461] When Konna was retaken, on 11 January 2013, at least 15 Tuaregs, Arabs and Fulanis suspected of collaborating with extremist groups were executed by members of the Malian Armed Forces based in Sévaré (Mopti region).[1462] On 18 January 2013, two Tuareg men from the same family, who were suspected by their neighbours of colluding with armed groups, were executed in Siribala (Ségou region) by approximately 10 members of the Malian Armed Forces from the Diabali camp.[1463] During the recapture of the city of Timbuktu by the Malian Armed Forces and the French armed forces in late January 2012, 10 Arab men and 1 Songhai man who remained in the city after the extremist armed groups had fled were arrested and killed by members of the Malian Armed Forces on suspicion of being associated with those groups.[1464] On 23 March 2013, at least four civilians were killed by the Malian Armed Forces in the course of sweep and securement operations in the city of Gao.[1465] Although

[1459] Case No. CEI32; See also case No. CEI28 (on 22 February 2012, two Malian Armed Forces helicopters were used to bomb a civilian camp of nomadic Tuaregs from the Kel-Essouk tribe, in the locality of Tin Kalouman, killing two people and injuring several others); Case No. CEI26 (on 17 April 2012, the Malian Armed Forces in Sévaré (Mopti region) reportedly executed three people, including two Tuaregs, who were accused by locals of collaborating with MNLA).

[1460] Case No. CEI26.

[1461] Case No. CEI11.

[1462] Case No. CEI28.

[1463] Case No. CEI35.

[1464] Case No. CEI08.

[1465] Case No. CEI23.

the number of killings of Tuareg and Arab men decreased after the signing of the Ouagadougou preliminary agreement, they did not stop completely.[1466]

894. From 2015, killings by the Malian Armed Forces were increasingly directed at members of the Fulani community from 2015, when the armed conflict moved towards the central areas of the country and extremist armed groups began to recruit more Fulanis.[1467] On 7 April 2016, seven Fulani men suspected of colluding with extremist armed groups were arrested and tortured by members of the Malian Armed Forces from the Diabali military camp. Two of them died as a result of their injuries.[1468] On 19 December 2016, four Fulani men and two boys aged 15 and 16, one Fulani and the other unidentified, were executed near the village of Isseye (Mopti region) by Malian Armed Forces soldiers from Mondoro who were conducting a "counter-terrorism" operation in the village.[1469] Between 2 and 21 May 2017, many Fulani men from the commune of Mondoro (Mopti region) were arrested and tortured by members of the Malian Armed Forces for alleged links to extremist armed groups. At least five of those men died as a result of their injuries.[1470]

895. The Commission also documented several cases of people being arrested, detained or abducted by Malian Armed Forces soldiers and never seen alive again, which gives the Commission reasonable grounds to believe that they were killed.[1471]

(b) Torture, mutilation and other cruel treatment

896. The Commission first wishes to point out that some of the deaths and disappearances documented above had been preceded by acts of torture and cruel treatment committed by the Malian Armed Forces.

897. The Commission also investigated several acts of torture, mutilation and cruel treatment committed by the Malian defence and security forces, especially the Malian Armed Forces, against

[1466] Case No. CEI34 (on 16 January 2013, a member of the Fulani community in Niono (Ségou region) who had been summoned by the local gendarmerie was taken from the gendarmerie premises, executed and buried by members of the Malian Armed Forces based in Diabali); Case No. CEI49 (on 16 April 2014, an elderly Tuareg herder was killed by a shot to the abdomen while grazing his cattle near the military camp in Gao); Case No. CEI72 (on 15 January 2016, following an attack by approximately 15 unidentified armed men on a Malian Armed Forces convoy on the outskirts of the Tuareg village of Zinzin, in the Timbuktu region, the Malian Armed Forces carried out a sweep operation in the village, during which they shot and seriously wounded two Tuaregs – a young man and boy – who were both unarmed. Both died as a result of their injuries).

[1467] Case No. CEI87 (on 8 January 2016, two brothers from the Fulani community were killed by members of the Malian Armed Forces based in Douentza, who were conducting an operation to search for firearms in a hamlet in the commune of Kerena, in the Mopti region).

[1468] Case No. CEI94.

[1469] Case No. CEI88.

[1470] Case No. CEI89.

[1471] Case No. CEI08 (on 14 February 2013, eight Arab men living in the Arabadjou district of Timbuktu and a man of Songhai origin were arrested by the Malian Armed Forces; the bodies of only some of them have been found); Case No. CEI26 (several allegations of enforced disappearance in Konna and Sévaré between April and July 2012); Case No. CEI29 (on 9 January 2013, the first day of the battle for Konna, three men went missing after departing on a motorcycle to fetch their animals from the outskirts of the village. The evidence and circumstances suggest that they were killed by the Malian Armed Forces from Sévaré); Case No. CEI29 (on 11 January 2013, an elderly Tuareg man leaving his house in Sévaré was beaten and arrested by Malian soldiers who were passing on the road; the man has not been seen alive since).

civilians or persons hors de combat, notably in the contexts of the recapture of cities in northern Mali in 2013 and 2014 and of the "counter-terrorism" operations conducted between 2015 and 2017. Those actions by the Malian Armed Forces caused severe pain and suffering to their victims, leaving some of them permanently disabled and generating extremely serious consequences for their mental health and quality of life.

898. For example, the recapture of the cities in the Timbuktu region by the Malian Armed Forces in 2013 was accompanied by violence against six Tuareg men, including one Bella, suspected of "terrorism", who were violently beaten at the time of their arrest in Léré (Timbuktu region) and during their detention, to the point where one of them lost consciousness and vision in one eye. Two of the detainees were allegedly injected on the arm with an unknown substance that caused serious injuries and burns.[1472] A few months after the Malian Armed Forces took back the city of Gao from MUJAO, their soldiers ill-treated 13 detainees suspected of belonging to or collaborating with the group, hitting them with sticks and truncheons, kicking them, electroshocking them, and cutting off the ear of one of them.[1473]

899. The victims of ill-treatment at the hands of Malian Armed Forces soldiers during the recapture of northern Mali were not just adults. During the first half of 2013, several boys who were arrested during operations related to the armed conflict were ill-treated at the time of their arrest, during their interrogation, or in the course of their transfer to Bamako.[1474]

900. The Malian Armed Forces continued to commit such abuses after the signing of the Peace and Reconciliation Agreement, in response to attacks against them. For example, in the first half of 2015, Malian Armed Forces soldiers in the Nampala military camp committed many acts of torture and cruel treatment against men, mostly from the Fulani community, whom they suspected of being complicit in attacks against the military in the region.[1475] The violent acts documented by the Commission included, for example, violently striking detainees with rifle butts, to the point of breaking one detainee's teeth, kicking them, beating them with sticks and metal-tipped belts, and burning them with heated objects. Beyond the pain and suffering that they endured following those abuses by the military, the victims often required significant medical follow-up.[1476] In April 2016, seven men from the Fulani community of Sokolo and Dogofri suspected of being complicit with extremist armed groups were detained at the Diabali military camp, where they were stripped naked, tied up, threatened with death, beaten brutally and burned before being returned to their cells. Two of the men thus tortured died from their injuries.[1477] In May 2017, many men, mostly Fulani, from the commune of Mondoro (Mopti region) were violently

[1472] Case No. CEI09.

[1473] Case No. CEI23; See also case No. CEI 24 (similar acts of violence occurred during an operation by the Malian Armed Forces in the Kadji Dar Es Salam neighbourhood of the village of Kadji, when they violently beat and ill-treated at least five people suspected of collaborating with MUJAO, one of whom was forced to stare into the sun without closing his eyes, thus permanently damaging his eyesight).

[1474] Case No. CEI38; Case No. CEI58 (in November 2014, following the recapture of Boulikessi, several people suspected of collaborating with extremist armed groups, including three boys, endured significant physical violence. For example, one of the boys, aged 14, was kicked in the head until he lost consciousness).

[1475] The Commission also documented, albeit to a lesser degree, cases of torture against Tuaregs. See, for example, case No. CEI72 (on 15 January 2016, a group of Malian Armed Forces soldiers arrested four Tuaregs from the village of Zinzin and beat them so badly that two of them had to have stitches in their heads).

[1476] Case No. CEI59.

[1477] Case No. CEI94.

beaten by Malian Armed Forces soldiers after their arrest, including with rifle butts and iron bars, for their alleged proximity to extremist armed groups. In some cases, the soldiers even carried out mock executions, and some of the detainees died as a result of those abuses.[1478]

(c) Rape and other forms of sexual violence

901. The Commission documented three cases of rape committed by soldiers of the Malian Armed Forces in connection with the conflict. In March 2013, following the arrest of several men from the village of Kadji suspected of collaborating with MUJAO, a Malian Armed Forces soldier from the National Guard went into a house, under the pretext of conducting a search, and raped a woman therein.[1479] In May 2014, a Malian Armed Forces soldier raped a 14-year-old girl in Gao while another soldier stood guard at the door.[1480] In July 2014, a Malian Armed Forces soldier raped a 16-year-old girl in the city of Timbuktu.[1481]

(d) Pillaging

902. The Commission documented many cases where Malian Armed Forces soldiers, during military operations, appropriated property for their personal use, without the owner's consent. For example, when searching several homes in the Kadji Dar Es Salam neighbourhood in early 2013, they stole valuable property and money from their owners.[1482] When they arrested seven men in Léré in February 2013, they dispossessed the victims of all the money in their possession.[1483]

(e) Other violations of the right to life and physical integrity

903. The Commission found that, on 28 November 2013, Malian Armed Forces soldiers opened fire on unarmed MNLA militants and sympathizers, mostly women and young people, including children, at the airport in the city of Kidal, killing one person and wounding at least three others.[1484] During the 12 July 2016 demonstration in Gao, defence and security forces fired at demonstrators, killing 3 people and wounding 31 others. In most of those cases, the use of potentially lethal force was not justified; indeed, it was in violation of the right to life and physical integrity.[1485] The Commission also found that the security forces used disproportionate force during the 17 August 2016 demonstration in Bamako.[1486]

Conclusion

904. In the light of the foregoing, the Commission considers that there are reasonable grounds to believe that, in the context of the armed conflict, the Malian Armed Forces committed murder and other forms of violence to life (including when civilians or persons hors de combat died from their injuries

[1478] Case No. CEI89.

[1479] Case No. CEI24.

[1480] Case No. CEI51.

[1481] Case No. CEI100.

[1482] Case No. CEI24.

[1483] Case No. CEI09.

[1484] Case No. CEI43; See also case No. CEI44 (demonstration at the airport in Kidal against the visit of the Prime Minister on 16 May 2014).

[1485] Case No. CEI79.

[1486] Case No. CEI98.

or when civilians were never seen alive again after being arrested or detained), and violence to person (including acts of torture, mutilation and use of poison). All these acts constitute war crimes. In the course of its investigations, the Commission also documented cases of rape[1487]and pillaging, which also constitute war crimes.[1488]

905. The Commission also considered whether the above-mentioned acts might constitute crimes against humanity. Its investigations indeed brought to light the multitude of crimes, including murder, enforced disappearances and acts of torture, committed by the Malian Armed Forces against Tuareg and Arab (and to a lesser extent Fulani) men during the first part of the conflict and, since 2015, against Fulani men suspected of belonging to or cooperating with extremist armed groups. The Commission wishes to emphasize that the scale of those crimes, in terms of both their geographic distribution and the number of victims involved, as well as their repetitive and similar nature, are relevant factors in demonstrating the existence of a widespread or systematic attack characteristic of crimes against humanity.[1489]

906. The Commission recalls, however, that, for it to classify the above-mentioned acts as crimes against humanity, it must also be convinced, based on its standard of proof, that the civilian population was "the primary target" of the attack;[1490] that the attack was launched "pursuant to or in furtherance of a State policy to commit such attack";[1491] and that the perpetrator(s) "had knowledge of the attack".[1492] Given its standard of proof, the Commission does not have sufficient evidence to consider that these criteria are met in the present case. It notes, however, that none of the abuses committed by the defence and security forces has resulted in a criminal trial to date,[1493]and that allegations of abuses against the Malian defence and security forces persist.[1494] The Commission considers that if these facts are established and the Malian State continues to fail to take action to prevent them and to punish the perpetrators, such conduct could be interpreted as “a policy of deliberate failure to take action, which is consciously aimed at encouraging” a widespread or systematic attack directed against the civilian population and thus constitute crimes against humanity.

ii. Abuses committed by CNRDRE and soldiers linked to Captain Sanogo

907. The Commission also investigated the abuses committed in Bamako and Kati in 2012 and 2013 during the coup, the counter-coup and the Kati mutiny. Following its investigations, the Commission was able to confirm that during the coup d'état at least five people, including civilians, were killed and

[1487]Article 8(2)(e)(vi)-1 of the Rome Statute.

[1488]Article 8(2)(e)(vi) of the Rome Statute.

[1489]See annex 1 - Notice on applicable law.

[1490]ICC, Bemba judgment, para. 154; Katanga judgment, para. 1104; ICTY, Stakić judgment, para. 627; ICTY, Kunarac decision, para. 90; ECCC, Nuon and Khieu judgment, 7 August 2014, paras. 182-187. The Commission notes, however, that members of armed groups who are hors de combat are considered to be members of the civilian population for the purpose of determining whether or not the attack was directed against "a civilian population".

[1491]ICC, Katanga judgment, paras. 1108-1110; ICC, Ntaganda judgment, paras. 673-674; ICC, Bemba judgment, paras. 157-161;

[1492]ICC, Elements of Crimes, article 7 (Crimes against humanity: Introduction), para. 2; See also ICC, Bemba judgment, paras. 166-169.

[1493]See section on the fight against impunity.

[1494]Report of the Secretary-General on the situation in Mali (S/2020/476), 2 June 2020, paras. 77 and 79; HRPD, MINUSMA, Note on the trends of human rights violations and abuses, 1 January–31 March 2020, April 2020, paras. 20-26 (French). Amnesty International, “‘They executed some and brought the rest with them’: human rights violations by security forces in the Sahel”, 10 June 2020, pp. 6-13.

that the assets and properties of individuals (including politicians) were pillaged and destroyed. Several political and military officials were arrested and detained outside of any judicial process.[1495]

908. Following the failed counter-coup of 30 April 2012, forces loyal to CNRDRE and Captain Amadou Haya Sanogo arrested and detained many soldiers, police officers and civilians. Malian Armed Forces soldiers loyal to Captain Sanogo executed at least 21 of those soldiers while they were hors de combat and buried them. Other soldiers endured particularly cruel acts, sometimes of a sexual nature, during their captivity. For example, one of the detained soldiers was stabbed with a bayonet in the buttocks, while at least four others were forced to have sex with each other. Many detainees were forced to drink their own urine or that of others, were beaten with truncheons, sticks and gun butts, or burned with cigarettes. Others had rags forced into their mouths to the point of asphyxiation during interrogations. Detainees also received death threats repeatedly.[1496]

909. In late September to early October 2013, in the context of the mutiny of soldiers from the Kati military camp, at least eight Malian Armed Forces soldiers disappeared or were killed. At least two soldiers were also severely beaten at General Sanogo's house on the night of 1 to 2 October 2013.[1497]

910. The above-mentioned acts constitute serious violations of human rights, in particular violence to life and person (cruel treatment and torture), outrages upon personal dignity (including humiliating and degrading treatment) and rape.

911. The Commission further notes that the coup d'état had been in reaction to the management of the armed conflict by the ruling power and could therefore be considered sufficiently connected to the armed conflict, falling within the Commission's mandate. However, the Commission considers that the soldiers involved in the coup and the counter-coup did not constitute a dissident armed force. The soldiers of the Malian Armed Forces - perpetrators and victims of the above-mentioned crimes - were members of the same party to the conflict and the victimized soldiers were not perceived to have paid allegiance to another party to the conflict.[1498] In the light of the foregoing, the Commission is of the opinion that international humanitarian law is not applicable to the criminal actions relating to the coup d'état and that the abuses cannot be classified as war crimes.

3. Armed groups associated with CMA

912. The Commission notes that many crimes were committed by armed groups during the first months of the conflict, although it could not always determine, based on its standard of proof, whether

[1495]Case No. CEI36.

[1496]Case No. CEI37.

[1497]Case No. CEI60.

[1498]See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, art. 1 (1); Article 3 common to the four Geneva Conventions of 1949; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Duško Tadić,* case No. IT-94-1-A, Appeals Chamber, judgment, 15 July 1999, paras. 164-166; *The Prosecutor v. Prlić et al,* case No. IT-04-74-T, Trial Chamber, judgment, volume 3/6, paras. 601-611; *The Prosecutor v. Prlić et al*, case No. IT-04-74-A, Appeals Chamber, 29 November 2017, judgment, paras. 353-360; See also Special Court for Sierra Leone, *Prosecutor v. Issa Hassan Sesay*, case No. SCSL 04-15- T, judgment (Trial Chamber), 2 March 2009, paras. 1451-1454.

the crimes could be attributed to members of extremist armed groups or to MNLA armed groups, or both.[1499]

913. In some of the cases mentioned below, however, the Commission was convinced as to the responsibility of MNLA fighters for the crimes documented. These probably represent only some of the crimes committed in the early months of the conflict, since it was impossible to attribute some of the crimes to any specific group or person, owing to the difficulty of distinguishing clearly between MNLA fighters and fighters belonging to extremist armed groups.

i. Murder and other forms of violence to life

914. The Commission has reasonable grounds to believe that, in the context of the armed conflict, MNLA murdered civilians or persons hors de combat. For example, on 4 November 2012, a member of MNLA killed a 16-year-old boy in the city of Ménaka for apparently refusing to give him his telephone.[1500] On 17 May 2014, during the attack on the Governor's Office in Kidal, members of MNLA killed at least eight people and seriously injured five others that were not participating in the hostilities.[1501]

ii. Violence to person and cruel treatment

915. In the context of the armed conflict, members of MNLA subjected prisoners under their control to cruel treatment. For example, on 15 February 2013, MNLA gunmen arrested several dozen Arab men in In-Khalil originating from Mali, Niger and Mauritania and kept them under the sun for an entire day, blindfolded and tied up. At least two of the men received serious injuries from that abuse.[1502] Between 17 and 19 May 2014, following the attack on the Governor's Office in Kidal by MNLA, several people captured during the attack were beaten and ill-treated while being held by CMA forces in several places of detention in the city of Kidal.[1503]

iii. Rape and other forms of sexual violence

916. At the beginning of the conflict, members of MNLA committed many acts of rape, sometimes gang rape, and other forms of sexual violence against women and girls living in the cities and areas that had come under the control of MNLA, particularly in Ménaka, Gao and Timbuktu.[1504] The Commission documented at least 15 cases of rape and one case of attempted rape committed against 21 victims in

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[1499] As the Commission has already explained in the report, the majority of witnesses interviewed could only describe the assailants by their clothing, the colour of their skin or the language they spoke, and sometimes their ethnicity, making it impossible for the Commission to determine with certainty specific responsibility for the acts in question. That applied in particular to the many cases of rape committed in the Timbuktu and Gao regions during the first months of the conflict. See also cases Nos. CEI01 (Aguelhok attack), CEI14 (murder of a Gao commune councillor on 25 June 2012) and CEI31 (execution of at least 15 men at the Dungurua well, in Ténenkou cercle on 18 March 2013).

[1500] Case No. CEI20.

[1501] Case No. CEI44.

[1502] Case No. CEI04.

[1503] Case No. CEI44.

[1504] See section on conflict-related sexual and gender-based violence.

Ménaka during the first five months of 2012 when the city was under the control of MNLA.[1505] In Gao, many women and girls who had been raped in their homes, sometimes for several days in a row, attributed those crimes to MNLA fighters, whom they distinguished from those of MUJAO. For example, one high school student (at the time of the events) recounted how, in April or May 2012, while MNLA was still occupying the city, she and her sister were raped by several members of MNLA in their home, while their father was tied up in the living room.[1506] In Goundam cercle (Timbuktu region), two women who had gone out for a walk were caught, tied up and raped by five armed men belonging to MNLA in 2012.[1507] While the incidents of rape declined substantially afterwards, they did not cease completely in areas controlled by MNLA.[1508]

iv. Pillaging and attacks against protected property

917. In the hours and days following the capture of the major cities of northern Mali, MNLA fighters engaged in massive pillaging, targeting all buildings in the conquered cities, including those dedicated to religion, education, science, or charitable purposes, and hospitals and health facilities. Upon arriving in Ménaka, they pillaged the Intitaniween and Tabangout 1 schools, the public high school, the hospital, the reference health centre and many private homes in the city.[1509] In the days following the capture of Gao by MNLA and extremist armed groups, MNLA members pillaged all buildings in the city, including several churches and the Bible institute, the warehouses of ICRC and WFP, the regional hospital, the health centre, private clinics and pharmacies, educational institutions such as the Sainte Geneviève school and the Teacher Training Institute (IFM), banks, State offices and homes of State officials.[1510] They committed similar acts in Timbuktu on 1 April 2012, before MNLA was driven out of the city the following day by Ansar Eddine and AQIM.[1511] The Commission recalls the special obligation in international humanitarian law to respect hospitals, health units, cultural property and institutions dedicated to religion, charitable purposes and education, as well as the special status enjoyed by humanitarian organizations (such as the Red Cross), and considers that the pillaging of those establishments was a clear violation of that obligation.[1512]

918. The pillaging continued during a significant portion of the conflict, each time that MNLA forces carried out an attack or in territories that were under their control. The day after the attack on the Arab community of In-Khalil, on 16 February 2013, MNLA fighters systematically pillaged the properties

[1505] Case No. CEI20; See also report of the Secretary-General on sexual violence in conflict (A/67/792-S/2013/149), 14 March 2013, paras. 52-53.

[1506] Case No. CEI18.

[1507] Case CEI07 (the Commission was also informed that a 14-year-old girl was kidnapped in Timbuktu in December 2012 by armed men posing as members of MNLA, who allegedly raped her under the influence of drugs and then released her after committing their crime).

[1508] For example, the Commission received credible information that in February 2014, when MNLA regained control of part of the Ménaka region, a woman and her two daughters were allegedly raped in Tilolamene by two individuals belonging to MNLA.

[1509] Case No. CEI20.

[1510] Case No. CEI12.

[1511] ICC, Decision on confirmation of charges against Al Hassan of 13 November 2019, para. 70; FIDH-AMDH, War crimes in North Mali, July 2012, p. 17; HRW, Mali: Northern rebels commit war crimes, 30 April 2012.

[1512] See, for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977, arts. 9, 10, 11, 16 and 18; Article 3 of the Geneva Conventions of 12 August 1949; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, arts. 4 and 19; Hague Convention respecting the Laws and Customs of War on Land of 1907, art. 42.

and shops of the Arab population of the community, stealing vehicles, money, livestock and all the goods in the shops.[1513]

v. Displacement of civilians

919. On 2 June 2013, in Kidal, MNLA arrested around 100 dark-skinned men suspected of being in the pay of the Government. It expelled at least 24 of them to the city of Gao, where they arrived on 4 June after having been stripped of their money and other valuables.[1514] According to the information available to the Commission, the expulsion of those individuals was not justified either by the need to provide security for the civilians concerned or by military necessity.

vi. Using, conscripting or enlisting children

920. The Commission has reasonable grounds to believe that MNLA, MAA and HCUA forces used children in the context of the armed conflict.

921. Children were among the MNLA fighters who stormed the Governor's Office on 17 May 2014 and among the MNLA, HCUA and MAA jailers who held the 34 people arrested for several days following that attack.[1515] MAA-CMA continued to use children after the signing of the Peace and Reconciliation Agreement.[1516]

922. The Commission recalls, however, that, contrary to conventional human rights law, international humanitarian law and international criminal law prohibit only the use, conscription or enlistment of children under the age of 15. Consequently, and in the light of the foregoing, the Commission was unable to confirm, in accordance with its standard of proof, that members of CMA had used, recruited or enlisted children under the age of 15. It was, however, able to confirm that children under the age of 18 had been used, recruited or enlisted.

Conclusion

923. In the light of the foregoing, the Commission considers that there are reasonable grounds to believe that, in the context of the armed conflict, MNLA forces committed murder and other forms of violence to life,[1517] violence to person (including cruel treatment),[1518]rape and other forms of sexual

[1513]Case No. CEI04; See also case No. CEI05 (the 20 or so men who were expelled from the city of Kidal on 2 June 2013 were dispossessed of all their property); Case No. CEI44 (when MNLA took the Governor's Office in Kidal on 17 May 2014, its members and those of MAA who were guarding the prisoners pillaged the buildings and arrested 34 employees, dispossessing them of their property); Case No. CEI47 (at the end of April 2015, members of CMA also pillaged properties and food places and vandalized public offices in their fight against Malian Armed Forces soldiers in Léré and Goundam cercles, in the Timbuktu region).

[1514]Case No. CEI05.

[1515]Case No. CEI44.

[1516]Case No. CEI61 (on 18 March 2016, a dispute broke out between two boys of Arab origin, 15 and 17 years of age respectively, living in a house used as a dormitory for MAA-CMA fighters in the locality of Aguelhok, in the Kidal region, at the end of which the younger boy shot and killed the other boy).

[1517]Article 8(2)(c)(i)-1 of the Rome Statute.

[1518]Article (82)(c)(i)-3 of the Rome Statute.

violence,[1519]pillaging (including of protected property),[1520]and displacement of civilian populations,[1521] all acts that constitute war crimes.

4. Armed groups of the Plateforme

i. Murder and other forms of violence to life

924. The day after the May 2015 clashes in Tin Hama between CMA armed groups and GATIA, alleged members of GATIA stopped, tied up and executed six people from the Kel-Essouk Tuareg community whom they suspected of being complicit with CMA groups.[1522]

925. The Commission investigated several other allegations of murder committed by GATIA. For example, on 23 October 2016, members of GATIA manning a roadblock on the road to Gossi killed a 17-year-old Arab boy who was with two other Arab boys in a vehicle as it approached the roadblock. However, considering the contradictory versions of the testimonies collected by the Commission, in particular on the reasons that led the members of GATIA to open fire in the direction of the victims, and considering that there were no legal proceedings that could help to set the record straight, the Commission is not able to establish, in accordance with its standard of proof, whether the perpetrators intended to kill the victim and, consequently, whether that act of murder can be classified as a war crime.[1523] Similarly, without a judicial investigation with exhumation, the Commission is not able to establish, in accordance with its standard of proof, whether the persons who disappeared in June 2017 around Anéfis were executed by members of GATIA.[1524] These cases are a forceful reminder of why the Malian State needs to conduct judicial investigations into these acts.

ii. Pillaging

926. During an attack in November 2014 that was likely linked to the conflict between CMA and the Plateforme, men presumed to belong to MAA-Plateforme pillaged and burned the properties of members of the Arab community of Oulade Ganam (village of Zarho).[1525] In June 2016, at a time of considerable political tensions between members of GATIA and the armed groups of CMA that largely administered the village, members of GATIA pillaged the WFP humanitarian assistance warehouse located in the village centre.[1526]

iii. Displacement and forcible transfer of the civilian population

927. That November 2014 attack on the village of Zarho by men allegedly belonging to MAA-Plateforme forced approximately 200 Arab families from the Oulade Ganam community to relocate in

[1519] Article 8(2)(e)(vi)-1 and 6 of the Rome Statute.

[1520] Articles 8(2)(e)(v) and 8(2)(e)(iv) of the Rome Statute.

[1521] Article 8(2)(e)(viii)-1 of the Rome Statute.

[1522] Case No. CEI53.

[1523] Case No. CEI73.

[1524] Case No. CEI 70.

[1525] Case No. CEI 70.

[1526] Case No. CEI63.

order to escape the violence.[1527] On the evening of 20 May 2015, three individuals, considered by some to be members of GATIA, went to inform the village marabout of the Kel-Essouk Tuareg community that the members of that community (perceived even before the clashes as CMA sympathizers) were undesirable and that arrangements should be made for those families to leave Tin Hama within 24 hours. The next day, following the execution of six members of the Kel-Essouk community, all families of the community (approximately 230 people) left the village.[1528]

iv. Cruel treatment

928. During the same November 2014 attack on the village of Zarho by men allegedly belonging to MAA-Plateforme, four men were arrested and then detained for almost four months in a cell run by MAA-Plateforme, and were subsequently hospitalized for one week for psychological disorders related, inter alia, to prolonged deprivation of light.[1529]

v. Recruitment of children under the age of 18

929. The Commission has reasonable grounds to believe that the self-defence groups Ganda Koy, Ganda Izo and FLN started training children in their camps in the city of Sévaré as early as 2012.[1530] The Commission's investigations also revealed that GATIA recruited many children between 2015 and 2017 and had them undergo military training and participate in its patrols. In July 2017, during the clashes between GATIA and CMA in Takelotte, some of those children participated in the fighting.[1531]

930. The Commission recalls, however, that, contrary to conventional human rights law, international humanitarian law and international criminal law prohibit only the use, conscription or enlistment of children under the age of 15. Consequently, and in the light of the foregoing, the Commission is unable to confirm, in accordance with its standard of proof, that members of CMA used, recruited or enlisted children under the age of 15. It can, however, confirm that children under the age of 18 were used, recruited or enlisted.

Conclusion

931. In the light of the foregoing, the Commission considers that there are reasonable grounds to believe that alleged members of GATIA committed murder,[1532]pillaging against a humanitarian assistance mission,[1533]and forced displacements, which constitute war crimes.

932. Men allegedly belonging to MAA-Plateforme engaged in cruel treatment, pillaging[1534]and forced displacement of a civilian population, which constitute war crimes.[1535]

[1527]Case No. CEI46.

[1528]Case No. CEI53.

[1529]Case No. CEI46.

[1530]Case No. CEI27.

[1531]Case No. CEI 70.

[1532]Article 8(2)(c)(i) of the Rome Statute.

[1533]Articles 8(2)(c)(i) and 8(2)(e)(iii) and (v) of the Rome Statute.

[1534]Articles 8(2)(c)(i)-3 and 8(2)(e)(v) of the Rome Statute.

[1535]Article 8(2)(e)(viii) of the Rome Statute.

933. The Commission also notes that groups belonging to the Plateforme (including Ganda Koy, Ganda Izo, FLN and GATIA) recruited children under the age of 15 and children between the ages of 15 and 17, and that GATIA used children between 15 and 17 years of age in hostilities.

5. MINUSMA forces

i. Violence to life and ill-treatment

934. As revealed in the report, MINUSMA forces, particularly the Chadian peacekeepers operating in the north of the country, were attacked on many occasions by extremist armed groups. While the MINUSMA contingents generally complied with international humanitarian law, the Commission documented one case in which MINUSMA peacekeepers deliberately ill-treated three civilians or persons hors de combat, resulting in the death of one of them.

935. On 18 May 2016, following the explosion of their convoy after hitting two mines, killing six of their colleagues, the MINUSMA soldiers arrested two Tuareg men and one Tuareg boy who were in the vicinity of the explosion site and, under the supervision of their commander, violently hit them on the head with the butts of their rifles. One of the men died as a result of the hits.[1536] All such acts constitute a serious violation of international humanitarian law and international human rights law.[1537]

ii. Violations of the right to life or physical integrity

936. On 18 April 2016, during a violent demonstration at the airport in Kidal, peacekeepers used their firearms, causing the death of two demonstrators, including one 17-year-old, and gunshot wounds to the lower limbs of nine others.[1538] An internal investigation was conducted into those incidents and the investigation report was submitted to the Special Representative of the Secretary-General in May 2016. The Commission notes that most of the MINUSMA soldiers had fired shots on the ground in order to defend themselves and to ensure their retreat. However, on the basis of the information at its disposal, the Commission considers that some of the shots constituted a potentially lethal use of force that was unjustified and that was in violation of the right to life or physical integrity.

6. French armed forces

937. The Commission documented one case where an 8-year-old child was killed from a helicopter of the French armed forces of *Operation Barkhane* during an operation in Aguelhok (Kidal region). The French Ministry of Defence launched an internal investigation, issuing a report on 30 November 2017 in which the French army regretted the death of the child, but considered that he was part of a group of lookouts who "were passing information on a French army logistical convoy approaching the area, to allow planters of improvised explosive devices to kill French soldiers", and that, given that

[1536] Case No. CEI67.

[1537] If the MINUSMA soldiers were directly participating in the hostilities at the time of the commission of such acts, then the acts could be considered violence to life and person constituting a war crime.

[1538] Case No. CEI62.

operational context, his "neutralization" was in accordance with the rules of the law of armed conflict.[1539]

938. As explained in detail in the present report, the Commission has no evidence to suggest that the child was indeed part of a network of lookouts. Moreover, even if the child was indeed a lookout, the Commission has received no information suggesting that the "network of lookouts" had participated, at the time of the events, in an ambush or in an imminent attack using improvised explosive devices against the logistical convoy of the French army. In the absence of such evidence, the factual basis for the French investigators' conclusion that the child was a *direct* participant in the hostilities is unclear. Furthermore, given the young age of the victim and the fact that he personally did not constitute an imminent risk to the French soldiers, the French authorities were unable to explain why they did not consider the possibility of arresting him rather than "neutralizing" him.[1540] In the light of the information at its disposal, and in view of the absence of evidence of the child's participation in the hostilities, the Commission considers that there are reasonable grounds to believe that, in this particular case, the French armed forces of *Operation Barkhane* did not comply, at the very least, with the obligation to do everything practically possible to ensure that the objective to be attacked was taking a direct part in the conflict.[1541]

939. The Commission also recalls that, during the clashes in Konna on 11 January 2013, a house where a woman lived with her three young children was hit by a missile launched from a helicopter. The information collected indicates that there were no armed group fighters either in the house in question or in the mosque just behind it, which was also hit, and that extremist armed group fighters were more than 150 metres away at the roundabout, at the entrance to Konna. Taking into consideration the contradictory positions of the French and Malian authorities, along with the information in its possession, the Commission concludes that there are reasonable grounds to believe that only French "Gazelle" helicopters were used in the clashes of 11 January 2013 in the locality of Konna. Consequently, the aerial attack that killed the woman and her three young children in their compound, and that also killed another man and injured several other people near the roundabout could only be attributed to the French helicopters.[1542] However, the Commission is not able to determine whether international humanitarian law or international criminal law was violated.[1543]

7. Dan Na Ambassagou

940. On 17 June 2017, members of the armed group Dan Na Ambassagou, in retaliation for the assassination of one of their members, carried out a series of attacks against several Fulani hamlets whose inhabitants were suspected of colluding with extremist armed groups. During the attacks, they

[1539] Document from a diplomatic source. See also Reuters, "Une enquête blanchit l'armée française pour le mineur tué au Mali", 30 November 2017.

[1540] See, for example, the Convention on the Rights of the Child of 20 November 1989, art. 38; Security Council resolution 1261 (1999) of 25 August 1999 (S/RES/1231 (1999)).

[1541] Moreover, if it were established that the soldier responsible for the attack had fired the shot without regard to the victim's status, the act could constitute murder as a war crime. Case No. CEI64.

[1542] Case No. CEI28.

[1543] For example, whether the attack in question constituted a war crime, a violation of the obligation under international humanitarian law to take the necessary precautions in the planning and execution of the attack, or whether it was human error in the context of an attack against a legitimate target.

killed at least 39 civilians, including children.[1544] The Commission notes that those attacks marked the beginning of systematic or widespread attacks by the group directed against Fulani in Koro and other cercles in the Mopti region. The Commission has reasonable grounds to believe that those acts amount to murder that constitutes a crime against humanity.[1545]

941. The aforementioned facts were "closely connected" to the hostilities and to the armed conflict. Indeed, it is clear from the information available to the Commission, including from the statements of leaders of Dan Na Ambassagou that the brotherhood developed, structured, organized and armed itself in response to the military shortcomings of the Malian State in the conflict with extremist armed groups. In fact, with the absence of the Malian Army in a large swathe of the Niger Delta over which it had lost control, particularly in Koro cercle (Mopti region), Dan Na Ambassagou became, with the tacit agreement of the Malian authorities, a leading player in the fight against extremist armed groups and a full-fledged actor in the armed conflict in the central part of Mali. The Commission considers that it was indeed that context of the armed conflict that prompted the group to organize itself, arm itself and take on the extremist armed groups, including by attacking the Fulani hamlets accused of sheltering fighters from those groups.[1546] Thus, the attack of 17 June 2017 took place "in the context of" and "was associated with" the armed conflict. The abuses committed during that attack therefore constitute murder as a war crime.[1547]

8. Macina self-defence group

942. For the same reasons, the Commission considers that the coordinated attacks carried out on 12 February 2017 by a group of Bambara hunters from Macina cercle (Ségou region) against several Fulani hamlets in the villages of Diawaribougou, Niona Peuhl and Toguéré Wéré, in which 18 Fulani men, 1 girl and 1 boy were killed, were closely linked to the armed conflict.[1548] In the Commission's view, therefore, the murders committed during those attacks can be classified as war crimes.[1549]

[1544] Case No. CEI 91.

[1545] Article 7(1)(a) of the Rome Statute.

[1546] Testimony No. 278; See also Le Point Afrique, Mali- Youssouf Toloba: "Notre mouvement cible les malfaiteurs, pas une ethnie", 12 December 2018 ("In many places where the Malian Army is not present, we protect the population").

[1547] Article (82)(c)(i)-1 of the Rome Statute.

[1548] Case No. CEI95; Testimonies Nos. 299 and 550.

[1549] Article 8(2)(c)(i) -1 of the Rome Statute.

9. *Serious human rights abuses and violations*

943. On the basis of all the facts established in this report and the crimes described above, the Commission concludes that the following human rights were violated or denied: the right to life, the right to physical or mental integrity, the right to liberty and security, freedom of thought, religion, opinion and expression, and the prohibition on the recruitment and use of child soldiers. Those violations and abuses had a direct impact on the enjoyment by the Malian population of their economic, social and cultural rights, such as the right to education.

944. The Malian State is responsible for the conduct of its organs, whatever functions they exercise and whatever their position in the organization of the State. In that regard, the Commission considers that the crimes committed by the Malian defence and security forces also constitute violations of international human rights law that are attributable to Mali and entail its international responsibility.

945. Despite the demonstrated close ties between some armed groups of the Plateforme (GATIA and local self-defence groups) and the Malian State, the Commission is not convinced that the human rights violations they committed can be attributed to the Malian State according to the standard of control required by international law.

946. The Commission recalls that the Malian State has an obligation not only to uphold the rights contained in the international instruments to which it is a party, but also to implement them and protect individuals against any violation or infringement of said rights. In the light of the situation described in the section on the fight against impunity, the Commission considers that, by failing to take sufficient measures to ensure that such violations are investigated, that the perpetrators are prosecuted and that the victims are compensated, the Malian State has failed in its obligation to protect human rights.

10. *Conclusion*

947. After completing its investigations, the Commission is able to conclude that abuses and serious violations of international human rights law and international humanitarian law, some of which constitute war crimes and crimes against humanity, were committed by the main parties to the conflict that began in 2012.

948. In particular, the Commission concludes that the extremist armed groups committed crimes against humanity against the Malian civilian population (including murder, imprisonment or other forms of severe deprivation of physical liberty, torture, rape, sexual slavery and other forms of sexual violence, and other inhumane acts). They also committed war crimes, including murder, mutilation and other cruel treatment, rape, sexual slavery and other forms of sexual violence, executions without previous judgments pronounced by a regularly constituted court, hostage-taking, outrages upon personal dignity, recruitment and use of children under the age of 15, and attacks against the personnel, property and facilities of humanitarian organizations and MINUSMA. The Commission also has reasonable grounds to believe that the Malian defence and security forces, in particular the Malian Armed Forces, committed violence to life and person against many civilians and persons hors de combat suspected of belonging to or cooperating with the extremist armed groups, in particular murders, enforced disappearances and acts of torture, mutilation and other cruel treatment that constitute war crimes. While the Commission considered that those acts might constitute crimes against humanity, in view of their scale and their repetitive and similar nature, it was unable to establish, according to its

standard of proof, that all the elements of crimes against humanity were present. The Commission also documented cases of rape and pillaging by the soldiers of the Malian Armed Forces that also constitute war crimes and cases of disproportionate use of force during demonstrations. All the crimes committed by the Malian defence and security forces and the violations documented in this report also constitute violations of international human rights law. The Commission believes that MNLA, GATIA and MAA-Plateforme also committed war crimes. It also documented two cases of serious human rights violations committed by MINUSMA forces and one case of a violation of international humanitarian law by the French forces of *Operation Barkhane*. The Commission has reasonable grounds to believe that members of the Dan Na Ambassagou group committed murders that constitute crimes against humanity and war crimes, and that the attacks on several Fulani hamlets by a Macina self-defence group amount to murders that constitute war crimes.

XI. Fight against impunity in Mali

949. As indicated earlier in this report, the Commission's work has shown that the failure of Mali to adequately address past abuses, violations and crimes and the resulting lack of justice was one of the root causes of the country's successive crises and one of the main causes of the crisis that began in 2012 in particular. In order to put an end to the recurring crises, the Secretary-General requested the Commission to include in the report on its investigation and its conclusions recommendations with a view to combating impunity in relation to the abuses and violations identified.[1550]

950. In accordance with that mandate, the Commission focused in its analysis and recommendations on the issue of impunity, defined as the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties and to making reparations to their victims.[1551] The Commission therefore documented the issues raised by the fight against impunity in Mali by collecting court documents and interviewing victims, witnesses, relevant actors and institutional partners on the subject of justice in Mali. It also organized a workshop on the issue in September 2019. The aim of those documentary efforts was to take stock of the fight against impunity since 2012, identify the main challenges facing the Malian justice system and guide the Commission in its discussions with a view to proposing solutions that would be relevant to the national context.

951. In this section of the report, the Commission examines the state of play in the fight against impunity in Mali. It highlights the efforts made and above all the challenges involved in that fight, enabling a greater understanding of the solutions identified in the recommendations. It also explains why combating impunity is a crucial factor in the country's ability to resolve the crisis.

(A) State of play in the fight against impunity in Mali

1. Existing institutions at the national and international levels

[1550] Mandate of the Commission, art. 1(c).

[1551] Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1), 8 February 2005.

952. A number of national and international courts have jurisdiction to consider human rights abuses and violations and international crimes falling within the Commission's mandate.

953. Mali has both ordinary and specialized criminal courts. In the ordinary court system, the regional courts (17 in number) and the district courts (41 in number) have jurisdiction over offences punishable by fewer than five years' imprisonment, while three assize courts, which are part of the appeal courts of Bamako, Kayes and Mopti, have jurisdiction over offences punishable by more than five years' imprisonment.[1552] With regard to the specialized courts, in 2013 [1553] Mali established a special judicial unit to combat terrorism and transnational organized crime, based in Bamako.[1554] In 2019, the jurisdiction of the Special Judicial Unit was expanded to include transnational crimes, given their grave nature, including crimes against humanity, genocide and war crimes.[1555] Military courts also exist, although their activity remains, in practice, very limited. They deal with offences committed by military personnel in times of war or peace, covering ordinary law offences attributable to military personnel in connection with their duties and specifically military offences.[1556]

954. Mali is also a State party to a number of international instruments that are relevant to the human rights abuses and violations and the international crimes that fell within the Commission's mandate. Mali ratified the Rome Statute of the International Criminal Court on 16 August 2000 and referred "the situation in Mali since January 2012" to the Court on 13 July 2012. Since 16 January 2013, the Prosecutor of the International Criminal Court has been conducting an investigation into Mali that principally concerns alleged war crimes committed since January 2012, mainly in the regions of Gao, Kidal and Timbuktu, and incidents that occurred in Bamako and Sévaré.[1557] In that context, two individuals who held leadership positions within Ansar Eddine and AQIM in Timbuktu in 2012 have been referred to the Court.[1558] In addition, pursuant to the regional commitments undertaken by Mali, Malian citizens may file individual applications concerning violations of their rights with the ECOWAS Court of Justice and the African Court on Human and Peoples' Rights, which generally rule in accordance with the provisions of the African Charter on Human and Peoples' Rights.[1559]

[1552] Arts. 4 and 9 of the Malian Penal Code; they are presided over by a panel of three judges from the Courts of Appeal, assisted by a jury composed of four Malian citizens; Code of Criminal Procedure of Mali, arts. 259 et seq.

[1553] Act No. 2013-016 of 21 May 2013 amending Act No. 01-080 of 20 August 2001 on the Code of Criminal Procedure.

[1554] Under art. 611-1 of the Malian Code of Procedure, the Special Judicial Unit has sole nationwide jurisdiction to prosecute and investigate terrorism, transnational organized crime and related offences. The same article provides that, in those cases, the Bamako Criminal Court (commune No. VI) shall have jurisdiction over ordinary offences and the Bamako Assize Court shall have jurisdiction over serious offences. Bamako Assize Court, which has jurisdiction over terrorism and transnational organized crime cases, is composed solely of professional judges.

[1555] Act No. 2019-50 of 24 July 2019 amending Act No. 080 of 20 August 2001 on the Code of Criminal Procedure.

[1556] Arts. 2 and 16 of the Code of Military Justice of Mali.

[1557] ICC, Office of the Prosecutor, report submitted pursuant to article 53 (1), 16 January 2013.

[1558] They are Ahmad Al Madhi Al Faqi, sentenced to nine years' imprisonment for the destruction of nine mausoleums and a mosque in Timbuktu, and Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, whose trial is due to start in July 2020 in The Hague, the Netherlands.

[1559] Art. 15 (4) of the Revised Treaty of the Economic Community of West African States (ECOWAS) of 1993; Arts. 9 (4) and 10(d) of the Supplementary Protocol A/SP.1/01/05 amending the preamble and articles 1, 2, 9 and 30 of Protocol A/P1/7/91 relating to the Community Court of Justice and article 4(1) of the English version of the said Protocol, 19 January 2005; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998, art. 3.

2. Assessing the fight against impunity by monitoring and analysing proceedings before Malian and international courts

955. The Commission documented in an empirical manner the judicial handling of the cases it investigated. For each case, the Commission tried to identify whether any investigations or judicial (or even administrative) proceedings had been initiated by the Malian State. If judicial proceedings had been initiated, the Commission tried to establish what stage they had reached and what action the Malian judicial authorities had taken to identify and try the alleged perpetrators of the crimes.[1560]

956. Despite receiving assistance from the Malian authorities and other partners, the Commission encountered significant difficulties, particularly in physically locating some of the files of the complaints lodged and determining which courts were handling some of the proceedings, owing to the lack of resources and computerized systems in the Malian justice system, and to the disorganized manner in which the courts have handled the conflict-related cases explained below.

i. Monitoring of class action complaints filed with Malian criminal courts (including for sexual and gender-based violence)

957. Owing to the lack of progress on individual complaints filed concerning crimes committed in 2012 and 2013, a number of victims' and human rights associations have filed class action complaints with the Malian criminal courts.[1561] The handling of those complaints, which mainly concern the extremist armed groups active at that time (Ansar Eddine, AQIM and MUJAO), exemplifies the significant difficulties faced by the victims of conflict-related crimes, particularly women.

958. On 29 November 2013, 17 victims of alleged crimes against humanity and war crimes (murders and acts of torture committed during the capture of the Aguelhok camp, and rapes committed in Timbuktu)[1562] filed a criminal complaint and accompanying civil claim against Iyad Ag Ghaly and other members of Ansar Eddine with the senior investigating judge of Bamako, commune No. III. The investigating judge conducted two witness interviews and issued a number of national and international arrest warrants for several suspects, who have yet to be arrested. In July 2017, the complaint was transferred to the senior investigating judge of the Special Judicial Unit. No further investigations appear to have been undertaken by the Special Judicial Unit since that date and the case seems to be at a standstill.[1563]

959. On 20 June 2014, 14 victims of a number of alleged crimes (criminal conspiracy, act of terrorism, violation of internal security and impersonation of a public official) filed civil claims in the context of

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[1560] In order to conduct its research, the Commission was in regular contact with the Malian judicial authorities, Malian lawyers and victims' and human rights associations, which informed the Commission, in some cases, of the existence of proceedings instituted in respect of some of the incidents it was investigating. The Commission also received assistance and support from the Human Rights and Protection Division and the Justice and Corrections Section of MINUSMA.

[1561] In particular, FIDH, AMDH, Association DEME SO, WILDAF Mali, the Association of Malian Women Jurists (AJM), the association "Cri du cœur" and the LWBC-JUPREC project (joint project between Lawyers Without Borders Canada and Justice, Prevention and Reconciliation for Women, Minors and Other Persons Affected by Conflict).

[1562] See case No. CEI01; Case No. CEI07.

[1563] Testimony No. 552; Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal.

the investigation opened into Houka Ag Alhousseini and other members of Ansar Eddine and AQIM by the investigating judge of commune No. III.[1564] On 3 May 2017, the prosecutor of commune No. III requested authorization to relinquish his jurisdiction to the Special Judicial Unit. On 27 June 2017, that request was granted by the Indictment Division of the Bamako Court of Appeal.[1565] According to the information in the Commission's possession, no investigation has been undertaken in the case.[1566]

960. Also on 20 June 2014, eight alleged victims of a number of crimes (including war crimes, torture, assault and battery), represented by the same lawyers, filed civil claims with an investigating judge from commune No. III in the context of the investigation opened into Aliou Mahamane Touré, Abdel Hakim Al-Sahraoui and other members of MUJAO in Gao in 2012.[1567] On 28 March 2017, Aliou Mahamane Touré was indicted and referred to the Bamako Assize Court.

961. On 12 November 2014, 82 women filed a criminal complaint and accompanying civil claim with the senior investigating judge of Bamako, commune No. III for sexual and gender-based violence that amounted to crimes against humanity and war crimes allegedly committed by the armed groups controlling Timbuktu and Gao between 2012 and early 2013. Some victims identified suspects by name, including Aliou Mahamane Touré, Oumar Ould Hamaha and other individuals suspected of belonging to MUJAO, Ansar Eddine, AQIM and MNLA.[1568] The Malian judicial authorities have interviewed some of the civil claimants, but no suspects have been prosecuted to date.[1569]

962. On 6 March 2015, 33 alleged victims of sexual violence committed in Timbuktu, classified as crimes against humanity and war crimes,[1570] filed civil claims with the senior investigating judge of commune No. III. Several members of Ansar Eddine and AQIM, including Houka Ag Alhousseini, Abou Tourab, Sanda Ould Boumama, Mohamed Ag Mosa, Abou Talha and Ali Demba, were identified

[1564] Criminal complaint and accompanying civil claim against Houka Ag Alfousseini, 20 June 2014.

[1565] Order No. 179 of 27 June 2017 of the Indictment Division of the Bamako Court of Appeal.

[1566] Testimony No. 552; Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal; See also memorandum dated 12 March 2020 from the Commission addressed to the Minister of Justice (annex 1). The reply dated 1 April 2020 from the Minister of Justice contains no information regarding that complaint and no information could be obtained from the judicial authorities.

[1567] See *MP v. Aliou Mahamane Touré and others*, Complaint of 20 June 2014 submitted by seven civil claimants to the investigating judge of the 8th Chamber of the Economic and Financial Unit of Bamako, commune No. III.

[1568] Class action complaint against X for crimes against humanity and war crimes filed on 12 November 2014 by 82 civil claimants with the senior investigating judge at the Regional Court of Bamako, commune No. III. The 82 women are represented by Brahima Koné and supported by the associations FIDH/AMDH, Deme So, WILDAF Mali, the Association of Malian Women Jurists (AJM) and the association "Cri du coeur".

[1569] Testimony No. 552; Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal; see also Memorandum dated 12 March 2020 from the Commission addressed to the Minister of Justice (annex 1). The reply dated 1 April 2020 from the Minister of Justice contains no information regarding that complaint and no information could be obtained from the judicial authorities.

[1570] Class action complaint against X for crimes against humanity and war crimes filed on 6 March 2015 by 33 civil claimants with the senior investigating judge at the Regional Court of Bamako, commune No. III. The 33 victims are represented by Brahima Koné and supported by the associations FIDH/AMDH, Deme So, WILDAF Mali, the Association of Malian Women Jurists (AJM) and the association "Cri du coeur".

in the complaint as alleged perpetrators. The Malian judicial authorities indicated that they were unable to locate the file corresponding to that complaint.[1571]

963. Between late 2016 and early 2017, a further 29 complaints were filed by Malian lawyers[1572] with the senior investigating judge in Gao, which mainly concerned alleged crimes committed against women and girls while the city was controlled by MUJAO members. Although some of the complainants did not identify the perpetrators of those crimes by name, some victims accused MUJAO leaders, including Abdel Hakim Al-Sahraoui and Aliou Mahamane Touré, of being responsible. According to their lawyers, none of the victims who filed a complaint has been interviewed by a judicial authority to date.[1573] On 10 December 2018, the association "Cri du cœur" filed an application with the ECOWAS Court of Justice regarding the failure of the Government of Mali to act in respect of 16 of the victims who had filed complaints with the investigating judge in Gao.[1574] On 6 February 2020, the ECOWAS Court of Justice heard testimony from the parties at its headquarters in Abuja and is expected to render its decision shortly.

964. In March 2019, another criminal complaint accompanied by a civil claim was filed with the senior investigating judge of the Special Judicial Unit by five women for alleged human trafficking, sexual slavery and other forms of sexual violence perpetrated by members of Ansar Eddine and AQIM between 2012 and early 2013, when the two groups controlled the city of Timbuktu. The complaint specifically targeted members of Ansar Eddine and AQIM in Timbuktu, including Ahmed Mosa, Demba, Talhat Mahamat and Al-Hassan. No investigations seem to have been undertaken in the case to date.[1575]

[1571] Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal; see also Memorandum dated 12 March 2020 from the Commission addressed to the Minister of Justice (annex 1). The reply dated 1 April 2020 from the Minister of Justice contains no information regarding that complaint and no information could be obtained from the judicial authorities.

[1572] Supported by several non-governmental organizations, including the association "Cri du coeur".

[1573] Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal; See also memorandum dated 12 March 2020 from the Commission addressed to the Minister of Justice (annex 1). The reply dated 1 April 2020 from the Minister of Justice contains no information regarding that complaint and no information could be obtained from the judicial authorities.

[1574] Sixteen other victims who had not filed a complaint with the Malian criminal courts joined the application. In its application, the association argued that, by failing to act on the complaints, Mali had violated several of its international obligations to protect human rights. In its reply, the Government of Mali argued that the applicants had erred in their choice of court by choosing to file a complaint with the Gao court when the events fell within the sole jurisdiction of the Special Judicial Unit, and said that the delay in handling the complaints had resulted from confusion caused by the juxtaposition of proceedings initiated simultaneously in Gao and Bamako by the victims, and from the security situation in the country, which limited investigators' access to the victims and to the areas where the crimes had been committed. The Government referred to the trial and conviction of Aliou Mahamane Touré as an example of its commitment to the successful prosecution of the alleged perpetrators of crimes and highlighted the role of the TJRC in gathering testimonies and possibly awarding reparations to the victims to illustrate its fulfilment of its obligations under the above-mentioned international conventions. See application to the ECOWAS Court of Justice dated 10 December 2018 and reply of the Government of Mali on procedure dated 12 February 2019; Reply of the Government of Mali on the merits dated 11 March 2019.

[1575] Memorandum dated 20 February 2020 from the Commission of Inquiry addressed to the Attorney General of the Bamako Court of Appeal; See also memorandum dated 12 March 2020 from the Commission addressed to the Minister of Justice (annex 1). The reply dated 1 April 2020 from the Minister of Justice contains no information regarding that complaint and no information could be obtained from the judicial authorities.

965. Of all the conflict-related class action complaints identified by the Commission, therefore, only one led to a criminal trial. Regarding the other complaints, either an investigation has been carried out but no proceedings have been instituted to date, or the complaint cannot be traced, or the information available to the Commission suggests that no investigation has been undertaken despite the existence of a civil claim. Analysis of those complaints also reveals that the victims of sexual and gender-based violence have received considerable legal support from a number of human rights organizations that have decided to focus on the issue in the judicial proceedings that they initiate. Those civil society organizations, however, have adopted different strategies, with some deciding to file class action complaints in Bamako and others electing to file individual complaints with the local courts. Despite the many complaints and the considerable attention that the issue of sexual violence has received from civil society, those complaints have still not been adequately addressed by the Malian judicial authorities.

ii. Analysis of the trials in three emblematic cases

966. The Commission also documented three trials in the cases that it investigated, which illustrate the array of challenges faced by the victims of human rights abuses and violations and international crimes, even when proceedings are undertaken all the way to their conclusion.

Trial of General Amadou Haya Sanogo and 17 others for the execution of 21 RCP soldiers

967. The first trial documented by the Commission was that of General Amadou Haya Sanogo and 17 others, including a number of his associates serving in CNRDRE, for murder, kidnapping, accessory to murder and accessory to kidnapping of 21 RCP soldiers, committed in the context of the repression of the attempted counter-coup d'état from 30 April to 1 May 2012.[1576] Before the trial had even begun, a significant number of documents disappeared from the investigation file and the file had to be reconstructed so that the trial could take place. The Commission also received credible and reliable testimonies that witnesses and judicial authorities involved in the case had come under extreme pressure, including death threats and attempted murder against them and their family members.[1577]

968. On 30 November 2016, the trial opened at the Assize Court, which had been relocated to a mobile court in Sikasso, a town 380 km from Bamako. According to the testimonies gathered, the witnesses and victims were not adequately looked after or protected during the trial. For instance, several witnesses were lodged in an unsecured and unsupervised location opposite the hotel where some of the accused were staying. It appears that witnesses even had to make their own arrangements to return to Bamako when the trial was suspended. After a few days of hearings, the Court decided to adjourn the trial so that a second forensic analysis of the bodies found near Kati could be prepared, since the first, according to the judges, had not been performed in accordance with the procedures set out in the Code of Criminal Procedure.[1578] Although the Assize Court had granted the experts a period of 45 days, the second expert report was not filed until a year later, on 31 January 2018, and was transmitted to the civil claimants in October 2018. Furthermore, the report is incomplete, because it does not contain the

[1576] Case No. CEI37; Order No. 585, indictment order and remand to the Assize Court, 22 December 2015.

[1577] Testimonies Nos. 395, 430, 429 and 484.

[1578] Testimony No. 430; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, pp. 24-29; AI, Mali: Violations and abuses as instability spreads, 2017; see also HRW, Statement, Mali: 'Red Berets' trial marks progress in tackling impunity, 29 November 2016

results of the second DNA tests, which were never sent from the Eurofins/Biomnis laboratory in France.[1579] Although the procedures established by the Assize Court provided for a resumption of the trial during the Assize Court's first session of 2017, it did not resume.

969. A new trial date was suddenly set for 13 January 2020, but the Attorney General of the Bamako Court of Appeal announced on 9 January 2020 that the trial would be postponed to the following session of the Assize Court in 2020, owing to "significant pressures having to do with the maintenance of law and order and cohesion within the armed forces deployed to protect the country", information that was immediately publicized by the spokesperson for the Government.[1580] In response, two judicial trade unions issued a press release, recalling that, under article 290 of the Code of Criminal Procedure, the President of the Assize Court had sole jurisdiction to order the adjournment of a criminal case and that the announcement by the Government of Mali therefore undermined the independence of the judiciary as the Government was taking an action that is the responsibility of the President of the Assize Court.[1581]

970. On 28 January 2020, in a legal reasoning that contradicted an earlier Supreme Court ruling, the Bamako Court of Appeal ordered the release of the 13 defendants still in detention in the case, including General Amadou Haya Sanogo. The Commission was able to confirm that the civil claimants had reached an out-of-court agreement with the Government of Mali that provided for the payment of substantial reparation to the families of the victims. The civil claimants have not contested the releases and may well withdraw from the case. Although a withdrawal of the complaint by the families of the victims does not extinguish the criminal case under Malian law, it would further limit the prospects of a trial in the case in question. It was also mentioned to the Commission that General Amadou Haya Sanogo and others who had been indicted wished to make use of the law on national reconciliation enacted in July 2019. As the Commission understands it, that would entail the accused making a statement before the Assize Court acknowledging the acts committed. However, on 10 April 2020, the Minister of Justice and Human Rights informed the Commission that he had not yet received any requests concerning application of the law on national reconciliation.[1582]

971. The 17 defendants referred to the Assize Court included the then Chief of Staff of the Armed Forces (now Minister of Defence and Veterans Affairs),[1583] Ibrahima Dahirou Dembélé, and the then Minister of Defence, Yamoussa Camara. The Indictment Division referred them to the Court on the charge of accessory to murder for knowingly attempting to conceal the disappearances.[1584] Both had taken the decision on 21 February 2013 to redeploy missing soldiers within *Operation Badenko*.

[1579] Report on the implementation of activities within the framework of judgment No. 94 of the Court of Appeal of Bamako in Sikasso, 31 January 2018.

[1580] Communiqué dated 9 January 2020 from the Attorney General of the Bamako Court of Appeal. See also AI, Mali: Delays in 'red berets' trial prolongs suffering of victims' families, 13 January 2020; FIDH-AMDH, Après la libération provisoire d'Amadou Haya SANOGO et de ses co-accusés, l'affaire sera-t-elle menée à son terme ?, 28 January 2020.

[1581] Joint SAM-SYLIMINA press release No. 001/2020, 17 January 2020.

[1582] Bamako Court of Appeal, Release order, 28 January 2020; Testimonies Nos. 430 and 506; Letter dated 10 April 2020 from the Minister of Justice and Human Rights and Keeper of the Seals addressed to the focal point of the International Commission of Inquiry for Mali.

[1583] The Commission notes that, at the time of submission of its report, Mali no longer has a Government and it is unclear whether the individual in question will be reappointed.

[1584] Testimonies Nos. 430 and 429; Decision No. 2013/00062/CENGA/S/CEM/ADM of the Chief of Defence Staff dated 21 February 2013; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, pp. 24-29; FIDH-AMDH, Mali : Justice in process (French),

972. It should also be mentioned that Amadou Haya Sanogo and several other soldiers, some of whom were also charged in this case, were indicted for abuses perpetrated during the mutiny at the Kati military camp in late September 2013. The most recent activity in the investigative process dates back to May 2018 and the investigation would reportedly not be completed due to its scope (around 100 civil claimants) and the number of cases on the docket of the Economic and Financial Unit. According to some interlocutors, however, the lack of progress is more a question of the discreet yet proven influence exerted by General Amadou Haya Sanogo and a lack of genuine political will to see the case move forward.[1585]

Trial of Aliou Mahamane Touré, head of the Islamic police in Gao under MUJAO in 2012 and early 2013

973. The second trial documented by the Commission was that of Aliou Mahamane Touré, who was head of the Islamic police in Gao during the period in 2012 and early 2013 when MUJAO controlled the city.[1586] On 23 December 2013, Aliou Mahamane Touré was arrested in the Gao region. He had firearms in his possession at the time of his arrest. On 29 January 2014, he was indicted by the investigating judge of Bamako, commune No. III, for "war crimes, torture, violation of State security, attacks on civilian targets, rape and other forms of sexual violence, recruitment of children and membership of a criminal organization".[1587] In the months following his arrest, several complaints were filed against him by victims' associations in connection with various crimes committed in Gao while the city was under the control of MUJAO.[1588] On 28 March 2017, the Indictment Chamber of the Court of Appeal of Bamako indicted Aliou Mahamane Touré for violation of State security, criminal conspiracy, possession of weapons of war and aggravated assault and battery. It declared, however, that he was not guilty of war crimes, on the grounds that "as Mali has not made a declaration of war, considering the possibility of war crimes might be somewhat superfluous, especially since the same act can be described in many different ways."[1589] When explaining the grounds for the indictment, the Chamber mentioned, inter alia, the amputations and floggings allegedly carried out by Mr. Touré but did not specify the number of such acts or identify the victims.

974. On 18 August 2017, Aliou Mahamane Touré was tried before the Assize Court of Bamako and sentenced to 10 years' imprisonment for terrorism, aiding and abetting terrorism, and criminal

March 2014, pp. 14-17; Confidential document of HRPD, MINUSMA. The appointment in May 2019 of Ibrahima Dahirou Dembélé as Minister of Defence while he is still facing charges was criticized by the group of victims' families. See RFI, Mali : le nouveau ministre de la défense heurte les familles des " bérets rouges", 7 May 2019.

[1585]FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017, p.35; Confidential document of HRPD, MINUSMA; Testimonies Nos. 505 and 506.

[1586]See the fact sheet on MUJAO in annex 3.

[1587]*MP v. Aliou Mahamane Touré*, Proceedings of first court appearance, investigating judge of the 8th Chamber of the Regional Court, commune No. III, 29 January 2014; See also indictment order and remand to the Assize Court, 28 March 2017.

[1588]See *MP v. Aliou Mahamane Touré and others*, Complaint of 20 June 2014 submitted by seven civil claimants to the investigating judge of the 8th Chamber of the Economic and Financial Unit of the Regional Court of Bamako, commune No. III. See also criminal complaint with accompanying civil claim submitted by 82 victims of sexual and gender-based violence to the senior investigating judge of the Court of First Instance of Bamako, commune No. III on 12 November 2014.

[1589]*MP v. Aliou Mahamane Touré*, Proceedings of first court appearance, investigating judge of the 8th Chamber of the Regional Court, commune No. III, 29 January 2014. See also indictment order and remand to the Assize Court, 28 March 2017.

conspiracy.[1590] Because the conviction decision was very brief, the Commission was unable to determine on which charges he had been convicted and on which he had been acquitted. It appears that Mr. Touré was convicted of certain floggings and amputations carried out in Gao in 2012, but those were only some of the incidents that were set out in the class action complaint or attributed to him by the Commission following its investigations.[1591] Aliou Mahamane Touré has therefore still not been prosecuted for acts of which he is accused, including rape and other forms of sexual violence and other kinds of violence.

975. The Commission notes that although Aliou Mahamane Touré was sentenced by the Assize Court to 10 years' imprisonment, he was released in exchange for two hostages held by the Macina katiba less than 2 years later, in February 2019, without any release procedure provided for by the law being followed.[1592] However, he was rearrested by French *Operation Barkhane* forces in the region of Gao on 29 November 2019.[1593]

Trial of 12 Bambara traditional hunters from the villages of Malemana and Koroguiri

976. The third trial documented by the Commission was that of 12 Bambara traditional hunters from the villages of Malemana and Koroguiri, who were accused of shooting and killing at least 18 Fulani men and wounding 7 others in the village of Malemana (Mopti region) on 30 April and 1 May 2016.[1594] In that case, the judicial authorities reacted swiftly; they opened an investigation immediately after the events, which resulted in the arrest of 37 people, 12 of whom were detained on 18 May 2016.[1595] The investigation conducted by the judicial authorities in Mopti led to 12 (identified) Bambara traditional hunters from Malemana and Koroguiri, included the alleged ringleader, being referred to the Court of Appeal of Mopti in April 2017 on charges of murder, attempted murder, accessory to murder and illegal possession of firearms. At the trial before the Court of Appeal of Mopti on 20 November 2017, three of the defendants – the leader of the militia of traditional hunters, his brother, and a son of the chief of the village of Koroguiri – accused of participating in the murder of three Fulani on 13 April 2016, were given suspended sentences of five years' imprisonment, despite admitting at the hearing that they had participated in the murders. The other nine defendants claimed that the investigation reports in which it was recorded that they had admitted their guilt were false, and were subsequently acquitted. The Commission wishes to highlight that while the advocate general had requested the conviction of the three accused who admitted their guilt at the hearing, he had nonetheless requested the Court to deliver "a sentence that would allow the accused to return home".[1596] The leniency of the sentences, considering the seriousness of the crimes of which the three men were found guilty, left some of the Fulani population, who had placed great hope in the proceedings, with the impression that the judicial system

[1590] Testimony No. 506, paras. 23–27, and testimony No. 552, paras. 10–20; Assize Court of Bamako, *MP v. Aliou Mahamane Touré*, judgment of 18 August 2017.

[1591] Case No. CEI15; Case No. CEI19; Case No. CEI17.

[1592] See case No. CEI93, above; Judgment of conviction of the Assize Court of Bamako, regular hearing of 18 August 2017, 12 October 2017; Jeune Afrique, Mali : 18 jihadistes auraient été libérés en échange d'un préfet et d'un journaliste, 9 May 2019; Jeune Afrique, Mali : arrestation d'Aliou Touré, ex-chef de la police islamique de Gao, 24 December 2013; FIDH-AMDH, Mali: Choosing justice in the face of crisis, September 2017.

[1593] Testimonies Nos. 525 and 552. See also RFI, Mali : l'ex-chef jihadiste Aliou Mahamane Touré à nouveau arrêté, 1 December 2019.

[1594] Case No. CEI90.

[1595] Confidential documents from a judicial source.

[1596] Confidential documents from a judicial source.

was biased depending on the ethnic origin of the perpetrators and that the priority was to appease the political authorities, who wanted to calm the situation, rather than to ensure justice for the victims.[1597]

iii. Assessment of the efforts of the Malian judicial authorities to fight impunity

977. With regard to the above-mentioned cases, the Commission does not consider that there was a general inertia within the judicial system with regard to the conduct of investigations, prosecutions and trials concerning the abuses, violations and crimes related to the conflict that were documented by the Commission; however, it is clear that judicial action taken in relation to cases linked to the crisis was limited and largely inadequate.

978. In most of the documented cases of abuses, violations and crimes, the Commission was unable to determine whether judicial proceedings had been initiated and whether those that had begun were still under way. The Commission sent notes verbales concerning the vast majority of those cases to the judicial authorities of Mali to find out what steps they had taken to investigate the incidents and prosecute the perpetrators.[1598] As at the date of submission of this report, the Malian authorities had provided information about only a small number of the cases mentioned in the notes verbales. It is therefore possible that the Commission may be unaware of some ongoing investigations and judicial proceedings. However, the Commission has reasonable grounds to believe that in the vast majority of those cases no investigations were initiated or, if they were, they were soon abandoned and did not lead to prosecutions, let alone judgments. This is the case for all the abuses committed by the Malian defence and security forces. According to the information in the Commission's possession, there has not been a single conviction in relation to those abuses.[1599]

979. Furthermore, despite the progress made in several judicial proceedings before the Special Judicial Unit concerning the events related to incidents documented by the Commission, as at the date of submission of this report, no trial has been held concerning any of the cases documented by the Commission that fall within the Unit's jurisdiction.

980. The Commission's analysis of the judicial proceedings concerning the incidents it investigated also revealed that many of them did not result in any investigation or prosecution, even though the abuses were public knowledge.[1600] Several of the victims interviewed said that they had been reluctant to file complaints not only because they feared reprisals but also because they were discouraged by the inertia or corruption of the judicial system.[1601] Some of the law officers who spoke to the Commission did not seem to think that they had a responsibility to initiate legal proceedings unless a victim filed a

[1597] Testimony No. 315; FIDH-AMDH, In central Mali, civilian populations are caught between terrorism and counter-terrorism, November 2018.

[1598] Note verbale dated 6 December 2019 from the Commission of Inquiry addressed to the Attorney General of Bamako and notes verbales dated 12 March 2020 and 21 May 2020 from the Commission of Inquiry addressed to the Minister of Justice.

[1599] Note in particular the lack of response from the Minister of Justice to the queries contained in two notes verbales, sent on 12 March 2020 and 21 May 2020, concerning violations documented by the Commission that were attributed to the Malian Armed Forces; See also of MINUSMA and OHCHR, Human rights and the peace process in Mali (January 2016–June 2017), February 2018.

[1600] Case No. CEI32; Case No. CEI28; Case No. CEI26; Case No. CEI10; Case No. CEI09; Case No. CEI35; Case No. CEI08; Case No. CEI23; Case No. CEI34; Case No. CEI49; Case No. CEI72; Case No. CEI87; Case No. CEI94; Case No. CEI88; Case No. CEI89; Case No. CEI29; Case No. CEI24; Case No. CEI38; Case No. CEI58; Case No. CEI59; Case No. CEI51; Case No. CEI46.

[1601] Testimonies Nos. 149 and 289.

complaint.[1602] However, article 3 of the Code of Criminal Procedure establishes that "the prosecution [...] shall be initiated and conducted by the law officers or civil servants empowered to do so under the law."[1603] Thus, investigations and prosecutions can be initiated whether or not a complaint has been filed, and the competent Malian judicial authorities should open an investigation whenever they become aware of the commission of a crime falling within their respective jurisdictions.

981. In accordance with its international commitments and international law, Mali has a responsibility to investigate and prosecute the perpetrators of serious human rights violations and international crimes.[1604] Based on the records of Malian courts, the Commission considers that the State of Mali violated the right of victims of human rights abuses, human rights violations and international crimes to prompt, adequate and effective access to justice, and their right to reparation. In so doing, it failed to fulfil its responsibility to investigate abuses and serious violations of human rights and international crimes and to prosecute and punish the perpetrators.[1605]

982. The proceedings before the ICC are undoubtedly contributing to the fight against impunity in Mali and undeniably shed light on certain aspects of the conflict. As at the date of submission of this report, the ICC Prosecutor had initiated proceedings against two individuals, Ahmad Al Madhi Al Faqi and Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, in connection with their responsibility for certain acts of violence, including sexual violence and attacks on cultural property, that took place when they were part of the Islamic police in Timbuktu in 2012 and 2013, while Ansar Eddine and AQIM were in control of the city.[1606] However, the nature and resources of ICC do not allow it act as a

[1602] See for example testimony No. 341.

[1603] Article 3 of the Code of Criminal Procedure of Mali.

[1604] Preambular paragraphs 4 and 6 of the Rome Statute and the principle of complementarity (tenth preambular paragraph 10 and articles 1 and 17 of the Rome Statute), in accordance with which the ICC may exercise its jurisdiction only when a State party is unwilling or unable genuinely to carry out the investigation or prosecution; Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, to which the Mali acceded on 16 July 1974; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, contained in General Assembly resolution 39/46, which entered into force on 26 June 1987 and to which Mali acceded on 26 February 1999; International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006, which was ratified by Mali on 1 July 2009 and entered into force on 23 December 2010; Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, which was ratified by Mali on 10 September 1985; Article 146 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, UNTS vol. 75, p. 287, which entered into force on 21 October 1950. See also International Tribunal for the Former Yugoslavia, *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* (case No. IT-96-21-T), judgment of 16 November 1998, paras. 163–173. African Commission on Human and People's Rights, *Mouvement ivoirien des droits humains (MIDH) / Côte d'Ivoire*, fifth extraordinary session, 29 July 2008, paras. 91–97; Rule No. 158 in ICRC, Revue internationale de la Croix-Rouge, vol. 87 Sélection française 2005, annex: Liste des règles coutumières du droit international humanitaire; Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1), 8 February 2005; Security Council resolution 1674 (2006) of 28 April 2006 (S/RES/1674 (2006)), paras. 7–8.

[1605] Annex 1 – Note on applicable law.

[1606] On 27 September 2016, an ICC trial chamber convicted Al Mahdi of committing the war crime of intentionally directing attacks against buildings of a religious and historical character as a co-perpetrator and sentenced him to nine years of imprisonment. On 17 August 2017, Trial Chamber VIII issued a reparations order holding Al Mahdi liable for 2.7 million euros in individual and collective reparations for the community of Timbuktu. ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15, judgment and sentence, 27 September 2016. Al Hassan was arrested in 2017 by French *Operation Barkhane* forces and handed over to the Malian authorities. On 27 March 2018, a warrant for the arrest of Al Hassan was issued under seal by an ICC pre-trial chamber. Al Hassan was surrendered to ICC

substitute for the State of Mali, which bears the primary responsibility for investigating serious human rights violations and international crimes and prosecuting the perpetrators.

(B) Challenges faced in the fight against impunity in Mali

983. Having noted the limitations in the way that the Malian judicial authorities addressed conflict-related abuses, violations and crimes, the Commission made an effort to analyse and highlight the difficulties faced by the judicial system in combating impunity. It identified situational obstacles linked to the crisis and also deeper structural problems, the lack of an independent judiciary and the inability of judicial actors to advance efforts to combat impunity in a context where ensuring justice in connection with conflict-related abuses, violations and crimes was not a political priority.

1. Situational obstacles

i. Dangers faced by law officers and judicial personnel]

984. From 2012 to 2013, the control exercised by armed groups in the three regions of northern Mali led to the expulsion of representatives of the State, in particular judicial personnel, and to the absence of the Malian judicial system in those regions. Even after the cities of northern Mali were retaken in 2013, extremist armed groups employed a strategy of targeted attacks against the few remaining representatives of the State, including members of the judiciary, in the northern regions and more recently in the central part of the country, which led to the non-return or displacement of many law officers and judicial personnel from the regions of Kidal, Gao (including Ménaka), Timbuktu and Mopti and the northern areas of the region of Ségou.

985. In the course of its investigations, the Commission documented the abduction on 16 November 2016 of the President of the Court of Niono, Songalo Koné, from his home on the outskirts of Niono (Ségou region). The abduction was attributable to the Macina katiba. Mr. Koné died in captivity, most likely in late 2018 or early 2019.[1607] That was not an isolated case; the Commission also noted several other attacks targeted specifically at members of the Malian judiciary.[1608]

986. Those attacks and the volatile security situation had a significant impact on the ability of law officers to properly exercise their duties.[1609] On 3 August 2018, the two unions of law officers called on their members to go on an indefinite strike in order to demand better safety conditions for the exercise of their duties and a new salary scale aligned with those of their counterparts in the rest of the subregion.

on 31 March 2018. On 30 September 2019, the Court confirmed 13 charges of crimes against humanity and war crimes in his case. An ICC trial chamber has set the opening date of the Al Hassan trial for 14 July 2020. ICC, Decision on the confirmation of charges against Al Hassan, 13 November 2019.

[1607] Case No. CEI93.

[1608] For example, on 23 January 2016, the (identified) prosecutor of Gao was attacked at his home by two armed men, one of whom was killed during the attack. On 31 October 2017, a convoy taking the (identified) President of the High Court of Justice from his home in Ténenkou (Mopti region) to Bamako was attacked by individuals on motorcycles, who shot at convoy, killing a driver. Jeune Afrique, Entretien avec Housseini Salaha, procureur de Gao, "L'État malien doit mieux protéger ses magistrats", 6 January 2017; Jeune Afrique, Mali, six morts dans une embuscade visant le président de la haute cour de justice, 1 November 2017.

[1609] See case No. CEI93 concerning the impact on the jurisdictions of Ségou. See also, for example, Le Monde, Mali: "J'ai reçu tellement de pressions et de menaces de mort…", 11 April 2019.

The strike ended on 5 November 2018, after more than 100 days, with the authorities agreeing to deploy 310 additional security officers to ensure the safety of judicial personnel and to address the concerns of all personnel regarding their salaries at a consultative forum, which took place in mid-January 2019.[1610] However, on 20 February 2019, when the Ministry of Justice confirmed the death of the President of the Court of Niono, the unions called on law officers from various regions of the country who feared for their safety to relocate to Bamako or other safer jurisdictions.

987. Thus, in 2012 and 2013, in the northern regions of Mali, and to an even greater extent from 2015, when attacks increased in the central part of the country, the absence of Malian judicial authorities on the ground gave armed groups free rein to handle matters that in principle fell within the purview of the State judicial system. During its field missions, the Commission noted that people in the central part of the country were increasingly looking to the mechanisms set up by the various armed groups to deliver some form of justice and settle disputes.[1611]

ii. Risks faced by victims and witnesses

988. From 2012, the increasing level of insecurity and the lack of State presence in large parts of the territory also affected the capacity of the Malian authorities to protect victims and witnesses who would likely have participated in trials. Several people interviewed by the Commission said that they had been afraid to testify because they feared reprisals from the suspects, who were not in detention. In several cases documented by the Commission, victims of abuses were still coming into contact on a daily basis with their alleged attackers, who were members of either armed groups or the Malian defence and security forces.[1612]

iii. Disorganization of the criminal courts of Mali from 2012

989. As the Commission found during its investigation into the handling of class action complaints filed by victims' and human rights protection associations, the criminal courts of Mali have been severely disorganized since 2012, something which has a direct impact on their capacity to combat impunity effectively. This disorganization is the result of a shortage of human and financial resources, a lack of information technology in the justice system, and a certain laxity in the management of cases by the offices of some law officers.[1613]

990. The disorganization is also the result of the confusion that followed the stripping of jurisdiction over certain cases from courts in the north in July 2012 and January 2013 and the restoration thereof in February 2015. In two judgements, issued in July 2012 and January 2013, the Supreme Court of Mali ordered that the jurisdiction exercised by the courts located in the areas affected by the armed conflict be transferred to the Economic and Financial Unit of the Regional Court of Bamako, commune No. III.[1614] As a result, a number of the complaints concerning crimes committed during the period when

[1610] Report of the Secretary-General on the situation in Mali (S/2018/1174), 28 December 2018, para. 16.

[1611] Testimonies Nos. 302, 289 and 299.

[1612] Minutes of meeting with members of TJRC.

[1613] CNDH, Annual report on the situation of human rights in Mali in 2018, p. 26.

[1614] Supreme Court of Mali, Judicial Section, Criminal Chamber, Order No. 46 of 16 July 2012 stripping jurisdiction over certain cases from the courts of the Kidal region and transferring it to the Regional Court of Bamako, commune No. III; Supreme Court of Mali, Judicial

the Islamist armed groups controlled the three northern regions of Mali were filed in commune No. III. On 16 February 2015, against the backdrop of the peace talks, the Supreme Court issued a ruling ordering the restoration of the jurisdiction of the courts of the northern regions.[1615] However, that order was not carried out in fact, as the law officers of the northern regions did not request that the cases be transferred and did not consider it to be their responsibility to investigate them until the law officers of commune No. III had relinquished jurisdiction over them. Conversely, the prosecutors of commune III considered that they no longer had jurisdiction to investigate the cases and were waiting for instructions to transfer them to the courts in northern Mali that had just regained their jurisdiction. The situation remained the same, leaving those cases in limbo, until 2017.

991. In 2017, the Special Judicial Unit, which had been established four years earlier, began its work. Shortly afterwards, the prosecutor of commune No. III requested that the Attorney General of the Court of Appeal of Bamako transfer jurisdiction over the conflict-related cases from the Regional Court of Bamako, commune No. III, to the Special Judicial Unit. Most of the cases concerning incidents linked to the conflict appear to be, at least theoretically, before the Special Judicial Unit.[1616] However, the Commission received information from the Unit concerning only a very small number of the cases that it believed must have been before the Unit.

2. Structural challenges

992. While the 2012 crisis has undeniably worsened the situation with regard to justice in Mali, the failings of the country's judicial system long predate the crisis. In many ways, the 2012 crisis has revealed pre-existing challenges, including (i) widespread corruption; (ii) a lack of resources; (iii) a lack of training for judicial actors; (iv) a lack of measures to protect victims and witnesses; and (v) the competing system of customary justice.

i. Corruption in the Malian judicial system

993. In its August 2019 study on illicit enrichment in the public sector in Mali, the Central Office for the Fight against Illicit Enrichment noted that Mali was perceived to be one of the most corrupt countries in the world. Most areas of the public sector are affected by corruption.[1617] In that context, and in accordance with its relevant international and regional obligations,[1618] the Government of Mali has established a number of mechanisms to combat corruption, including the Office of the Auditor General and the Central Office for the Fight against Illicit Enrichment. Despite that recent progress, it is clear

Section, Criminal Chamber, Order No. 4 of 21 January 2013 stripping jurisdiction from the courts of the occupied regions and transferring it to the Regional Court of Bamako, commune No. III.

[1615] Supreme Court of Mali, Judicial Section, Criminal Chamber, Order No. 11 of 16 February 2015 restoring the jurisdiction of the courts of northern Mali.

[1616] See the part of this report on class action complaints, under the present section on the fight against impunity in Mali.

[1617] Office for the Fight against Illicit Enrichment, Etiologie de l'enrichissement illicite dans l'administration publique au Mali, August 2019; See also Transparency International, Mali: Overview of corruption and anti-corruption, 2017; Le Monde, Au Mali, le système est infesté par la corruption et les citoyens y sont habitués, 1 August 2019.

[1618] Mali has signed and ratified the United Nations Convention against Corruption of 9 December 2003, the African Union Convention on Preventing and Combating Corruption of 12 July 2003, the Economic Community of West African States Protocol on the Fight against Corruption of 21 December 2001 and the Economic Community of West African States Protocol on Democracy and Good Governance of 21 December 2001.

that the impact of such efforts remains limited and that corruption continues to pose a significant obstacle to access to justice in the country.

994. Corruption is particularly prevalent in the Malian judicial system; a number of independent investigations have shown it to be one of the sectors most affected by corruption in the country.[1619] Every survey of the Malian population conducted since 2013 has shown that Malians perceive the judiciary to be the most corrupt institution, followed by the police and the gendarmerie.[1620] In a recent survey by the Hague Institute for Innovation of Law, 88 per cent of the 8,300 respondents rated the level of corruption of the Malian judiciary as "very high" or "high".[1621] Other reports have highlighted cases of law degrees being bought and people being promoted because of their financial resources or relationships.[1622]

995. In the course of its investigations, the Commission was able to assess the endemic nature of corruption, which affects all levels of the criminal justice system, from police officers and gendarmes to clerks, prosecutors, lawyers and judges. Corruption may take various forms, such as bribing a police officer to draw up a report that is favourable to the suspect, bribing a clerk to make a document disappear from a file, or bribing a law officer to drop charges or order the release of people who have been arrested. Several witnesses who spoke to the Commission mentioned specific amounts that gendarmes demanded in order to go to crime scenes, including in cases involving serious personal injuries. When questioned on the matter, some soldiers and gendarmes explained that they did not have money to pay for fuel for work-related transport. However, not only is that practice problematic in itself, but the sums mentioned did not seem to be in line with the cost of travel.[1623] Other witnesses, who had been subjected to ill-treatment and torture after being arrested, told the Commission that they had had to pay significant sums of money to the gendarmes who had arrested them, or to intermediaries, in order to have the judges in charge of their cases order their release. The Commission received evidence suggesting that the practice was common, or even widespread, and affected many courts, including the Special Judicial Unit, at least until recently.[1624]

996. According to some of the lawyers who spoke to the Commission, corruption within the Malian judiciary was so institutionalized that some of their clients thought that their fees included a sum to "convince" judges. That shows how law officers were perceived by people going through the system, and how the latter endured, tolerated or worked around such practices.[1625] Those practices had disastrous effects on the Malian people's perception of the judicial system. In its 2017 expert report, Transparency International described corruption as "a key contributing factor to low levels of public trust in formal judicial authorities [which …] significantly undermine State legitimacy."[1626]

[1619] Clingendael Intitute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, pp. 47–53; JUPREC, La corruption du système judiciaire au Mali, une enquête sur les perceptions des acteurs et des usagers du système, 2018, 58 pages.

[1620] Afrobarometer, L'Etat, le citoyen et la corruption, 2013; HiiL, Justice needs and satisfaction in Mali, 2018, pp. 186–188.

[1621] HiiL, Justice needs and satisfaction in Mali, 2018, p. 185.

[1622] Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, p. 51.

[1623] Testimony No. 277. See also CNDH, Annual report on the situation of human rights in Mali in 2018, p. 27.

[1624] Testimonies Nos. 487, 472, 295, 304 and 300.

[1625] Testimonies Nos. 429, 506, 523, 470 and 487.

[1626] Transparency International, Mali: Overview of corruption and anti-corruption, 2017. In a recent evidence-based survey on corruption in the judicial system in Mali, JUPREC shed further light on the extent of the phenomenon and its consequences and highlighted the lack of

997. Corruption affects justice and efforts to combat impunity in several ways. It often deters victims, in particular the poorest among them, from filing complaints, as they know that the process will cost them a significant amount of money and that the perpetrators are unlikely to be punished. In that connection, several witnesses indicated that they chose not to file official complaints, in order to avoid having to pay significant amounts money to corrupt judicial personnel, and instead turned to armed groups to seek revenge or some form of summary justice.[1627] The corruption within the Malian judicial system is thus contributing directly to the perpetuation of the violence that has been fuelling the conflict in Mali since 2012.

ii. Lack of resources of the Malian justice system

998. Despite the launch of the Emergency Programme for the Strengthening of the Judicial System and for the Implementation of the Peace and Reconciliation Agreement[1628] and the assistance of the international community, the Commission noted during its investigations that the Malian justice system continued to lack financial and human resources.

999. Mali allocates a negligible portion of its budget to the justice system. Indeed, the budget of the Ministry of Justice accounted for 0.44 per cent of the national budget in 2014 and still represented under 1 per cent in 2019, despite the proportion of 3 per cent recommended by ECOWAS.[1629] During its visits to Malian courts, the Commission noted the difficult working conditions of judicial personnel, the dilapidated state of certain court buildings and the lack of technical resources, in particular information technology. The lack of computerization in the Malian justice system significantly slowed the system's operations and facilitated corruption by making it possible for court documents to disappear. The lack of resources must nevertheless be examined in conjunction with the other challenges facing the Malian justice system. As noted in a recent report from a research centre, merely increasing resources without addressing the other problems facing the system would be "tantamount to pouring water into a leaking bucket".[1630]

1000. There is also serious lack of human resources in the Malian justice system. Mali currently has fewer than 600 judges for a population of about 19 million, or approximately 3 judges per 100,000 people, a ratio well below the global average. Mali also has a large territory and very few courts. Justice under ordinary law is dispensed by 17 regional courts and 41 district courts. As a result, people must

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public confidence in the judiciary. JUPREC, La corruption du système judiciaire au Mali, une enquête sur les perceptions des acteurs et des usagers du système, 2018.

[1627] Testimony No. 299.

[1628] The Emergency Programme for the Strengthening of the Judicial System and for the Implementation of the Peace and Reconciliation Agreement is designed to strengthen the Malian judiciary in order to foster a credible, effective and responsible justice system in the service of social peace and socioeconomic development.

[1629] In his 2009 report, to illustrate the impact of that budgetary policy on the operations of the justice system, the Auditor General of Mali indicated that one of the courts of first instance of Bamako, which handled about 3,500 cases per year, had an annual budget of less than CFAF 1,200,000 (about $2,000). Report of the Auditor General of Mali, 2009, p. 125.

[1630] Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, p. 54. For example, in its 2009 report, the Office of the Auditor General, an independent authority established in 2004 to monitor public spending in Mali, noted the disappearance of 50 computers, 50 uninterruptible power supplies and 44 printers purchased by the Government of Mali, which were not found in the courts for which they were intended. Report of the Auditor General of Mali, 2009, p. 125.

travel extremely long distances to reach the nearest court.[1631] There are also only 342 lawyers in Mali and the vast majority of them are located in Bamako.[1632] The clear lack of legal professionals contributes to the impunity of perpetrators and to the slowness of many proceedings.

iii. Training of Malian judicial personnel in international criminal law

1001. The Commission concluded that no individuals have been tried or convicted of war crimes or crimes against humanity for conflict-related abuses, violations and crimes, although such crimes were committed during the crisis in Mali. According to multiple witnesses interviewed by the Commission and to reports on the justice system in Mali, the lack of prosecutions and trials for international crimes before Malian courts was the result of the inadequate training of judicial personnel in the investigation and prosecution of such crimes. A number of reports have also indicated that the lack of post-academic training of Malian law officers has a direct impact on the quality of available justice services.[1633]

iv. Lack of concrete measures to protect victims, witnesses and human rights defenders

1002. During the course of its work, the Commission noted the impact on judicial proceedings of the lack of measures to protect victims and witnesses, human rights defenders and, more generally, anyone participating in the judicial process and in the fight against impunity in Mali.

1003. The normative framework for the protection of victims and witnesses remains very underdeveloped in Mali. The Code of Criminal Procedure contains no specific provisions on the matter, apart from the provision that the pretrial detention of an accused person may be ordered if such detention is the only means of preventing pressure on witnesses.[1634] Although the Fight against Trafficking in Persons and Related Practices Act of 12 July 2012 contains a chapter on the protection of victims and witnesses in which it is stated that in camera proceedings may be used "in order to protect the identity and privacy of victims and witnesses", the Act is still relatively general and concerns only trafficking in persons.[1635] The Committee notes that a number of legislative proposals concerning the protection of victims and witnesses have been put forward by civil society but have not yet been enacted.[1636] The bill amending the Code of Criminal Procedure, which is currently under discussion, incorporates some general principles relating to the protection of victims and witnesses but, as it provides for no concrete measures to ensure such protection, it is unlikely to be enforced.[1637]

1004. Similarly, although the efforts made to support the International Criminal Court's activities related to the protection of victims and witnesses represents valuable practical experience that has fostered the development of State capacities in that area, there are still no specific programmes dedicated to the protection of victims and witnesses in Mali. There had also been plans to establish a

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[1631] CNDH, Annual report on the situation of human rights in Mali in 2018, p. 26.

[1632] CNDH, Annual report on the situation of human rights in Mali in 2018, p. 28.

[1633] Lawyers Without Borders Canada, Accès à la justice au Mali: Une réalité à bâtir, 2017.

[1634] Testimony No. 523; Article 123 of the 2001 Code of Criminal Procedure (consolidated 2013).

[1635] Articles 22 to 25 of the Fight against Trafficking in Persons and Related Practices Act of 12 July 2012.

[1636] For example, the bill on the protection of victims of human rights violations in the Republic of Mali and the bill on the protection of witnesses of human rights violations in the Republic of Mali.

[1637] Version of 27 January 2020, shared in preparation for a national validation workshop; Section VI – Protection of witnesses and victims, articles 231 to 241; See also testimony No. 523.

protection unit within the Truth, Justice and Reconciliation Commission (TJRC), but it was never set up.[1638]

1005. A law of 12 January 2018 on human rights defenders sets out the rights and responsibilities of human rights defenders, as well as the State's obligations towards them.[1639] That law provides for the freedom of human rights defenders to assemble, to seek information on human rights and to keep, publish, transmit and freely disseminate such information. The law also provides that human rights defenders may communicate with State bodies and institutions and with relevant international bodies, and that they may obtain national and international funding.[1640] Although a decree on the implementation of the law was enacted on 18 February 2020, it does not specifically indicate the rules for the organization and operation of the protection mechanism designed to give effect to the law.[1641]

v. Difficulties of access to justice for victims and witnesses

1006. The difficulties faced by Malians in accessing justice are the result of geographical, cultural and socioeconomic factors.[1642] Those challenges, which existed long before the 2012 crisis, in particular for women and vulnerable people, were amplified by the crisis.

1007. In order to file a complaint with the authorities, victims often have to travel long distances, owing to the vastness of the country, the limited number of courts and the departure of judicial personnel from certain areas. Such trips are sometimes impossible or are made difficult by the security conditions, which make travel on certain roads extremely dangerous. Furthermore, laws are published in French and the judicial system operates in that same language, although many Malians are not fluent in French.[1643]

1008. In 2001, the Government passed a law on legal aid, which enabled persons without adequate resources to be represented by a lawyer or other officer of the law in civil and criminal courts.[1644] Although a decree on the implementation of the law was passed in 2006, very few legal aid offices are operational and most people do not turn to the court system owing to a lack of financial resources. Several witnesses interviewed by the Commission complained about the formal and informal costs of proceedings before the Malian judicial authorities.[1645] In the absence of real legal aid, except for occasional assistance from human rights protection associations and from CNDH, victims are simply not in a position to file complaints. Although any person on trial for a crime must be assisted by a lawyer, most legal aid lawyers are only appointed the day before the trial, which is not enough time to

[1638] TJRC procedures manual, p. 53; Interview with source No. 112.

[1639] Act No. 2018-005 of 12 January 2018 on human rights defenders, Official Gazette of 19 January 2018.

[1640] Articles 3 to 7 of Act No. 2018-005 of 12 January 2018 on human rights defenders.

[1641] Decree No. 2020-0087 of 18 February 2020 establishing the procedures for the implementation of the law on human rights defenders; See, in particular, the lack of specific measures in chapter IV, which merely recalls the State's obligation to protect human rights defenders and authorizes CNDH to "call on any person or any other entity involved in upholding the rights to protect and promote human rights".

[1642] See Lawyers Without Borders Canada, Accès à la justice au Mali: Une réalité à bâtir, 2017.

[1643] CNDH, Annual report on the situation of human rights in Mali in 2018, p. 28.

[1644] Law on legal aid, art. 23: Notaries, bailiffs, auctioneers and experts who assist the beneficiary of legal aid shall receive from the State compensation calculated in accordance with the rates and under the conditions set forth in Decree No. 96-255/P-RM of 30 June 1995 on legal fees in civil proceedings and in Decree No. 95-211/P-RM of 30 May 1995 on legal fees in criminal proceedings.

[1645] CNDH, Annual report on the situation of human rights in Mali in 2018, pp. 27–28.

adequately prepare for a criminal trial. Hence, in the vast majority of cases, persons in pretrial detention or on trial before criminal courts do not have access to a lawyer, owing to unfamiliarity with the judicial system and for financial reasons.[1646]

vi. Lack of trust in the national justice system among Malians, who prefer customary justice mechanisms that are unsuited to handling serious crimes

1009. The Malian State has never had a monopoly over the dispensation of justice in a large portion of its territory. Long before colonization, disputes between individuals, families or tribes were already being resolved by traditional chiefs and local religious leaders based on Islamic custom or law. The gradual development of a colonial and then State judicial system did not put an end to customary justice or diminish its popularity.[1647] The Malian justice system thus continues to exist alongside traditional dispute resolution systems.

1010. For some people interviewed by the Commission during its investigations, in particular in the regions of Kidal and Timbuktu, the Malian justice system represented a "foreign" form of justice that Mali had tried to artificially establish in regions that had been accustomed to a form of justice that was considered fairer, less corrupt and closer to Islamic values.[1648] For some of those interviewed, the State justice system was also a manifestation of the domination of Bamako over the northern regions and, like the Army or the Police, represented an extension of public authority, which was perceived as biased and corrupt.[1649] Other people interviewed by the Commission during its investigations, including in the central and southern parts of the country, also criticized the high cost of the Malian justice system (particularly due to endemic corruption), its complexity and its slowness, to explain why they used other dispute settlement mechanisms that were considered simpler, faster and less costly.

1011. Many studies and reports also indicate that Malians are reluctant to resolve disputes through the justice system for cultural reasons. A lawsuit is often perceived as an act of hostility towards the other party, his or her family or community, and an amicable settlement is always preferable. Indeed, the French proverb "a bad arrangement is better than a good trial" accurately reflects the Malian attitude towards justice.[1650] This cultural distrust of the State justice system, as well as the use of alternative justice mechanisms, has increased as a result of the 2012 crisis and the reduced presence of the State in the northern regions and then in the central part of the country.

1012. As research has also shown, customary justice systems, which are geographically and culturally closer to many Malians, can help to prevent the escalation of small-scale conflicts and to reduce the caseload of national courts. Customary justice mechanisms thus represent a valuable alternative to the Malian justice system for family, land and commercial disputes, and even for cases of petty crime.[1651]

[1646] See Lawyers Without Borders Canada, Accès à la justice au Mali: Une réalité à bâtir, 2017, p.45; CNDH, Annual report on the situation of human rights in Mali in 2018, pp. 27–28.

[1647] Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, pp. 16–18.

[1648] Testimonies Nos. 412, 413, 414, 421 and 431.

[1649] Testimonies Nos. 412, 413, 414, 421 and 431.

[1650] Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, pp. 34–41.

[1651] According to the Clingendael Institute, it is estimated that 80 per cent of family and land disputes in poor and rural communities in Mali are handled by customary justice systems. See Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, p. 43.

1013. However, the Commission is of the view that customary justice mechanisms are neither designed nor able to address abuses, violations and serious conflict-related crimes.[1652] Indeed, the pursuit of an amicable reconciliation or agreement between parties is sometimes incompatible with the victim's right to justice. For example, during its interviews with traditional judges, the Commission noted that cases of sexual violence against women during the conflict were often treated in the same way as civil or commercial disputes, with a focus on "reconciliation" between the victim's family and the perpetrator, often in exchange for money. The Commission's investigations showed that, when cases of abuse against women and children were brought before customary judges, the victims were neither heard nor consulted. Moreover, when the crime was attributable to an armed group controlling the area, victims and their families were sometimes induced to accept the terms of an amicable agreement under pressure or intimidation, against their true wishes.

1014. Customary justice mechanisms also do not offer the procedural safeguards essential for a fair criminal trial. Accused persons are arrested and detained by the police forces of armed groups and are brought before a traditional judge on the same day. They do not have the right to a lawyer and are encouraged to admit responsibility for the offence in order to be pardoned by the victim. With few exceptions, neither the accused nor the victim has the option to appeal. In the absence of written judgments and case law, decisions and sentences vary significantly depending on the judge. In addition, a perpetrator's ability to avoid a harsh sentence may depend on his or her social status or wealth, which can allow him or her to "buy" the pardon of the victim or of his or her family.

1015. In conclusion, while customary mechanisms can ease tensions by resolving small-scale commercial or marital disputes and even cases of petty crime, they are not a viable solution for addressing conflict-related abuses, violations and serious crimes, and cannot serve as a substitute for formal criminal justice.[1653]

3. Political obstacles

i. Interference with the independence of the justice system

1016. Between its independence in 1960 and the first democratic presidential elections in 1992, Mali was governed by two regimes that used justice as a weapon to achieve their goals and promote their political interests.[1654] Although the 1992 Constitution provides for mechanisms to ensure the independence of the justice system, in practice it is sometimes difficult for the system to maintain its independence from political authorities.

[1652] According to an Afrobarometer survey, only 2 per cent of Malians believe that customary justice mechanisms can properly handle cases of human rights violations in the country. Afrobarometer, Malians seek accountability, national trial for wrongdoers in conflict, 16 May 2014.

[1653] According to a survey conducted by the Hague Institute for Innovation of Law, the vast majority of Malians believe that the perpetrators of the 2012 crimes should be tried before a formal mechanism, with 51 per cent in favour of a national mechanism and 19 per cent in favour of an international mechanism. Only 6 per cent were in favour of a traditional justice mechanism. HiiL, Justice needs and satisfaction in Mali, 2018, p. 207. According to an Afrobarometer survey, only 2 per cent of Malians believe that customary justice mechanisms can properly handle cases of human rights violations in the country. Afrobarometer, Malians seek accountability, national trial for wrongdoers in conflict, 16 May 2014.

[1654] Clingendael Institute, Beyond dichotomy: recognising and reconciling legal pluralism in Mali, November 2015, p. 20; Diarra, A., Démocratie et droit constitutionnel dans les pays francophones d'Afrique noire: le cas du Mali depuis 1960, Paris, Éditions Karthala, 2010.

1017. The National Judicial Council is responsible for ensuring the independence of the judicial branch, although in practice the executive branch continues to have influence over its activities. The Commission noted that some members of the judiciary seemed to prefer not to be involved in cases related to the armed conflict, for security reasons and to avoid any adverse impact on their careers. The Commission's investigations also showed that the law officers responsible for investigating or prosecuting the most politically sensitive cases faced pressure, threats and even reprisals.[1655]

1018. Malian law provides that "the competent judicial authority shall request authorization from the Minister of Defence for a serving member of the Armed Forces to be made available to participate in any criminal proceeding against said member".[1656] The Commission noted the difficulties encountered by the Malian judicial authorities in prosecuting soldiers responsible for serious human rights violations and crimes as a result of that provision, as the Minister of Defence did not systematically agree to make those individuals available. In its report of February 2018, the Human Rights and Protection Division of MINUSMA noted that none of the 65 cases of serious human rights violations against 321 victims attributable to the Malian defence and security forces between January 2014 and June 2017 that it had documented had progressed beyond the investigation phase, as the judicial authorities indicated that the soldiers in question had not been made available by their supervisors.

ii. Release of prisoners for political purposes

1019. Another political obstacle to justice was the unilateral release of prisoners by the Government without consultation with the judiciary in the context of negotiations with armed groups.[1657] The Commission's investigations revealed that the Malian authorities had released, at the request of armed groups and within the framework of "confidence-building measures", more than 150 people who had been formally detained by the Malian justice system.[1658] A few days before the signing of the Ouagadougou preliminary agreement in June 2013, the Government of Mali released dozens of prisoners from armed groups against whom arrest warrants had been issued by two investigating judges from commune No. III of Bamako.[1659] The Attorney General of the Bamako Court of Appeal at the time publicly condemned the political authorities' interference with the judiciary.[1660] Similarly, two days before the date on which the armed groups were scheduled to sign the Peace and Reconciliation Agreement, the Government withdrew the arrest warrants against 15 CMA leaders, including Bilal Ag Acherif and Mohamed Ag Najem of MNLA, Alghabass Ag Intalla of HCUA and Sidi Brahim Ould Sidatt of MAA-CMA.[1661]

1020. Some of the individuals released as part of those "confidence-building measures" had been formally accused of acts that could constitute crimes against humanity, war crimes or other serious human rights abuses. For example, as part of the "confidence-building measures", Houka Ag

[1655]Testimony No. 429.

[1656]Article 17 of Order No. 2016-020/P-RM of 18 August 2016 on the general status of military personnel.

[1657]See Lawyers Without Borders Canada, Les enjeux de la lutte contre l'impunité au Mali, January 2017, p. 13; FIDH-AMDH, Mali: Peace threatened by insecurity, impunity and the fight against terrorism, 19 February 2016.

[1658]Confidential document of HRPD, MINUSMA.

[1659]Confidential document of HRPD, MINUSMA.

[1660]Niarela.net, Daniel Tessougué: "Tant que je resterai procureur général, aucun prisonnier rebelle ne sera libéré!"

[1661]Report of the Secretary-General on the situation in Mali (S/2015/732), 22 September 2015, para. 2.

Alhousseini, head of the Islamic court of Timbuktu during the period in which Ansar Eddine and AQIM controlled the city, who had been arrested on 17 January 2014, was released by the Malian authorities on 15 August 2014 at the request of CMA. He then returned to the region of Timbuktu, where he resumed his activities. On 10 July 2019, he was also placed on the list of persons who were obstructing the peace process in Mali.[1662]

1021. Detainees were also released in exchange for national or international hostages. For example, in December 2014, the Malian authorities reportedly released four detainees who had allegedly committed serious crimes, including terrorist acts, in exchange for the release of the French hostage Serge Lazarevic.[1663] In March 2019, they also released at least 17 detainees in exchange for the release of two hostages that were being held by the Macina katiba. Those detainees included Aliou Mahamar Touré, who had been convicted in 2017 for serving as an officer of the Islamic police of MUJAO in Gao in 2012, and another man, who had been formally accused of terrorism by the Special Judicial Unit.[1664]

iii. The Amnesty Act of 18 May 2012 and the National Accord Act

1022. The last factor revealing the Malian Government's lack of willingness to make the fight against impunity a priority is the regular use of amnesty laws that hamper any investigation, prosecution and trial of the perpetrators of serious human rights violations and abuses. The Commission recalls the incompatibility of amnesty measures with the obligation of States to punish the perpetrators of serious crimes under international law.[1665]

1023. As noted earlier in the present report, the Malian Government has already made use of general amnesty laws in the past, particularly in relation to the rebellion of the 1990s.[1666] In the context of the 2012 conflict, on 18 May 2012, the transitional government, then still largely influenced by the National Committee for the Promotion of Democracy and State-Building that had led the coup d'état, passed and promulgated on the same day an Act providing amnesty for "all offences committed in Mali from 21 March to 12 April 2012 in connection with the coup d'état".[1667] The Act provided officers, non-commissioned officers, ordinary soldiers and all other persons who assisted them with amnesty from prosecution for a long list of offences.[1668] As a result of the Act, no judicial inquiry was initiated to determine responsibility for the events related to the coup.

[1662] List established pursuant to Security Council resolution 2374 (2017): MLi.005.

[1663] FIDH, Mali: Release of Mohamed Aly Ag Wadoussène: peace and reconciliation cannot be achieved through impunity, 10 December 2014.

[1664] Case No. CEI93.

[1665] See, for example, International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, judgment of 10 December 1998, para. 155; African Court on Human and Peoples' Rights, *Malawi Africa Association and Others v. Mauritania*, paras. 81-85; OHCHR, Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, prepared by Ms. Diane Orentlicher, E/CN.4/2004/88, 27 February 2004, paras. 26-33; See also article 29 of the Rome Statute.

[1666] See section on context and causes of the 2012 Malian crisis.

[1667] Act No. 2012-020 of 18 May 2012 granting amnesty for the events that took place during the mutiny and led to the resignation of the President of the Republic.

[1668] The following offences are mentioned in the Act: mutiny, violation of the internal security of the State, violation of external security, destruction of buildings, opposition to legitimate authority, violence and assault, obstruction of the public highway, voluntary manslaughter, involuntary manslaughter, assault and battery, unintentional injury, kidnapping, illegal arrests, false imprisonment, wilful damage to the movable and immovable property of others, arson, looting, extortion and fraudulent expropriation, robbery, theft, infringement on the freedom to work (or on freedom of employment) and damage to public property.

1024. On 31 May 2018, the Cabinet proposed a national accord bill, the aim of which was to promote the restoration of peace and national reconciliation.[1669] Despite strong opposition from 51 human rights associations and detailed criticism of its content,[1670] the National Accord Act was adopted by the National Assembly on 27 June 2019 and promulgated by the President of the Republic on 24 July 2019, following consultations and some improvements.[1671]

1025. Article 3 of the Act provides, inter alia, for "exemption from criminal proceedings instituted or contemplated against persons who have committed or been accomplices in crimes or offences, as provided for and punished by the Malian Criminal Code, and other criminal laws and international conventions and texts ratified by Mali on the protection and promotion of human rights that occurred in the context of the events associated with the crisis that began in 2012 and which seriously undermined national unity, territorial integrity and social cohesion". While the new version of article 4 excludes from the scope of the Act "war crimes, crimes against humanity, rape, violations of international and African conventions on human rights law and international humanitarian law and any other crime deemed imprescriptible", the terms of articles 3 and 4 are confusing, contradictory in some respects and sufficiently vague to allow for divergent interpretations, which could lead to amnesty for those who have committed serious human rights violations and abuses in Mali since 2012.[1672]

1026. The Commission recalls that under article 46 of the Peace and Reconciliation Agreement, the Malian Government undertook to ensure that there was no amnesty for the perpetrators of war crimes, crimes against humanity and serious human rights violations, including conflict-related violence against women, girls and children.[1673] Despite that explicit provision, the Commission notes that the National Accord Act provides for an exclusion from amnesty only for rape, without reference to other forms of sexual violence, such as forced marriage or other forms of sexual assault, which were nevertheless documented by the Commission. The National Accord Act does not explicitly mention violence against children either.

1027. While the Act contains provisions to give concrete expression to the policy of restoring peace and reconciliation, by organizing, for example, a "day of national forgiveness", a "week of national reconciliation" and the "drafting of an inclusive general history of Mali", the Commission considers these proposals to be premature since they do not take into account the recommendations that the Truth, Justice and Reconciliation Commission might make in that regard. The same comment applies to the provisions on reparations to victims. Moreover, as rightly noted by civil society organizations, the

[1669] Articles 2 and 3 of Act No. 2019-042, known as the National Accord Act.

[1670] Joint press release dated 9 November 2018 issued by 47 human rights organizations against the National Accord Act; See also report of the Secretary-General dated 1 October 2019 addressed to the Security Council (S/2019/782), paras. 18 and 19. See Lawyers Without Borders Canada, Le projet de loi d'entente nationale: Une menace pour la paix, la réconciliation et les droits des victimes au Mali, Une analyse critique d'Avocats sans frontières Canada, 29 October 2018.

[1671] Act No. 2019-42 of 24 July 2019 on the National Accord Act.

[1672] Lawyers Without Borders Canada, Le projet de loi d'entente nationale: Une menace pour la paix, la réconciliation et les droits des victimes au Mali, 2019.

[1673] Article 46 of the Peace and Reconciliation Agreement.

procedures put in place are inadequate and, in some respects, it is even difficult to understand how they can be practically implemented.[1674]

1028. During its work in Mali, the Commission gathered testimonies from law officers and civil society organizations that fear the consequences of the National Accord Act, which they perceive as potentially disastrous for the transitional justice process in Mali and for the right of victims to justice, truth and reparation.[1675] On 8 August 2019, the Association of Malian Prosecutors issued a press release deploring the adoption of the Act and inviting Malian prosecutors to "fully assume their responsibilities by complying solely with the provisions of the Code of Criminal Procedure".[1676]

1029. Already in October 2018, the Commission had expressed to members of the Malian Government its concerns about the impact that the bill could have on its mandate, considering that certain provisions of the Act were likely to ensure the impunity of perpetrators of serious human rights violations, including violence against women and children. The Commission solemnly reiterates its warning about the potentially harmful consequences that the National Accord Act could have on the transitional justice process and on the establishment of lasting peace and reconciliation in Mali, particularly if its implementation were to result in an amnesty for those responsible for serious human rights violations and abuses.

(C) Importance of justice and the fight against impunity in resolving the crisis in Mali

1030. Besides the obstacles and challenges within the Malian justice system, impunity in Mali is above all due to a lack of political will to make the issue a priority. For example, in his 2019 report, the Independent Observer on the implementation of the Agreement on Peace and Reconciliation in Mali noted that, compared to other sections of the Agreement, section V (reconciliation, justice and humanitarian questions) had not received as much attention as the others during the implementation process, and that the implementation rate for section V-related commitments was only 33 per cent.[1677]

1031. Since 2012, victims' and human rights associations have been calling on the Malian Government to actively engage in the fight against impunity and to bring the perpetrators of abuses, violations and crimes to justice.[1678] The Security Council has also urged the Malian authorities to ensure that "all those responsible for crimes involving violations and abuses of human rights and violations of international humanitarian law, including those involving sexual and gender-based violence, are held accountable and brought to justice without undue delay."[1679] Despite these calls, it must be noted that the perpetrators of the vast majority of the atrocities committed in Mali since the start of the conflict remain unpunished and continue to enjoy total impunity.

[1674] Lawyers Without Borders Canada, Le projet de loi d'entente nationale: Une menace pour la paix, la réconciliation et les droits des victimes au Mali, 2019.

[1675] Testimonies Nos. 429, 506, 524, 487 and 527.

[1676] Press release of the Malian Association of Prosecutors, 8 August 2019.

[1677] Independent Observer, Report on the implementation of the Agreement on Peace and Reconciliation in Mali, 2019, p. 8.

[1678] Lawyers Without Borders Canada, Le combat des maliens et des maliennes pour la paix et contre l'impunité, 2017; Lawyers Without Borders Canada, Les enjeux de la lutte contre l'impunité au Mali, January 2017; FIDH-AMDH, Mali: peace threatened by insecurity, impunity and the fight against terrorism, 19 February 2016; FIDH-AMDH, Mali: La libération de Sanda Ould Bouamama par la Mauritanie est un coup dur pour les victimes de la crise malienne, 6 August 2015.

[1679] Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019)), preamble and para. 53; See also Security Council resolution 2423 (2018) of 28 June 2018 (S/RES/2423 (2018)), para. 61.

1032. During its work, the Commission heard from its interlocutors about their weariness and despair in the face of the impunity that most perpetrators of violations and crimes in Mali continue to enjoy. Many stressed that the fight against impunity was a prerequisite for the peace process and lasting reconciliation in Mali.[1680] Those testimonies are in line with the many studies and surveys conducted by various research centres and civil society, which show that Malians are very much in favour of shedding light on crimes and identifying and prosecuting the perpetrators.[1681]

1033. The stakeholders of the Peace and Reconciliation Agreement who met with the Commission also expressed their commitment to establishing a genuine policy to combat impunity, in parallel with negotiations aimed at leading the country out of its years-long crisis.[1682] That desire is also expressed in the Peace and Reconciliation Agreement, which refers to the need to put into practice the rules on good governance, respect for human rights and justice, measures to combat impunity and a commitment to comprehensive justice reform to end impunity.[1683]

1034. The Commission is convinced that a comprehensive, sincere and coordinated approach to combating impunity will not only help to establish the criminal responsibility of those most responsible for serious crimes, but will also to promote peace, truth, reconciliation and the rights of victims.[1684] Indeed, as recalled in the preamble to the United Nations set of principles for the protection and promotion of human rights through action to combat impunity: " there can be no just and lasting reconciliation unless the need for justice is effectively satisfied."[1685] Justice is an essential part of

[1680]See for example minutes of the meeting on countering impunity held on 25 September 2019; Testimonies Nos. 137, 207, 307, 470, 315, 270, 472, 431, 487, 370 and 350; Meeting of 1 November 2018 with a high-ranking Malian religious representative; See also interview with Moctar Maricko, "La lutte contre l'impunité au Mali est un vain mot", 24 November 2018; Journal du Mali, La justice, condition essentielle de la réconciliation, 15 March 2018.

[1681]According to an Afrobarometer survey, 73 per cent of Malians would like to see light shed on crimes, compared with 26 per cent who would prefer to move on to something else; 90 per cent would like the perpetrators of political crimes to be convicted. Malians also wished to see prosecutions at all levels and wanted the perpetrators of human rights violations to be permanently barred from holding public office. Afrobarometer, Malians Seek Accountability, National Trial for Wrongdoers in Conflict, 16 May 2014. According to another survey conducted by The Hague Institute for Innovation of Law, Malians wanted to know what had really happened. They were eager to know the truth (49 per cent). Malians wanted those responsible for atrocities to be held accountable (45.7 per cent) and leaders to be brought to justice (40.5 per cent). Forgiveness, peace and compensation for victims were considered a lower priority. The Hague Institute for Innovation of Law, The needs of the Malians for justice: towards more fairness, p. 21. See also Lawyers Without Borders Canada, Le combat des maliens et des maliennes pour la paix et contre l'impunité, 2017; Lawyers Without Borders Canada, Les enjeux de la lutte contre l'impunité au Mali, January 2017; FIDH-AMDH, Mali: peace threatened by insecurity, impunity and the fight against terrorism, 19 February 2016; FIDH-AMDH, Mali: La libération de Sanda Ould Bouamama par la Mauritanie est un coup dur pour les victimes de la crise malienne, 6 August 2015. Coulibaly M., Popular perceptions of the causes and consequences of the confilct in Mali, Bamako, Afrobarometer, 2014.

[1682]Minutes of the meeting with Plateforme members held on 10 July 2019; Minutes of the meeting with CMA held on 11 February 2019; Minutes of the meeting with the Plateforme held on 28 January 2019; Minutes of the meeting with the High Representative of the President of the Republic for the implementation of Agreement on Peace and Reconciliation in Mali, Mr. Mahamadou Diagouraga, held on 30 October 2018; Minutes of the Commission's meeting with the Plateforme and CMA held on 31 October 2018. See also testimony No. 471.

[1683]Preamble, article 1 (e), (f), (g) and article 46 of the Peace and Reconciliation Agreement.

[1684]See, in this context, Security Council resolution 1674 (2006) of 28 April 2006 (S/RES/1674 (2006)) on the protection of civilians in armed conflict.

[1685]Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, 8 February 2005.

reconciliation, since it enables victims of atrocities not only to know the truth about the facts but also to obtain reparation and, where appropriate, to forgive. However, forgiveness, in so far as it is a private act, implies that the victims know specifically the perpetrators of the crime and that the perpetrators express their repentance.[1686]

1035. It is clear from the Commission's investigations that not imposing sanctions on those responsible for committing decades of atrocities in Mali, including members of the army, has contributed to the prevailing culture of impunity today. That impunity also increased a sense of injustice and spirit of revenge among the communities affected by the crimes. Those feelings, which are deeply rooted in some people, have undoubtedly helped to foster the resurgence of the crises affecting Mali since its independence.

1036. The absence of sanctions against perpetrators of serious human rights violations could suggest that the Malian authorities tolerate or even encourage such practices, particularly with regard to violations and crimes committed by the defence and security forces. Systematic prosecution of those responsible for atrocities would also serve as a deterrent, discouraging perpetrators, particularly when they are members of the military, from committing human rights violations. By specifically attributing responsibility for certain crimes to certain individuals, justice would also help to put an end to cycles of revenge and violence between communities and, in particular, prevent a whole community from being stigmatized and perceived by other communities as the perpetrator or accomplice of the crimes committed. The deterioration of the situation in central Mali and the risk of such violence becoming even more widespread requires such a response.

1037. The Commission considers that the fight against impunity for the most serious abuses, violations and crimes is not only an obligation for Mali, but also a prerequisite for lasting peace and for addressing the root causes of the Malian conflict. The Commission urges the Government of Mali and the international community to ensure that the fight against impunity is a top priority in the peace process and does not take second place to other considerations.

XII. Conclusions

1038. Following its investigations, the Commission is able to conclude that serious violations and abuses of international human rights law and international humanitarian law, some of which constitute war crimes and crimes against humanity, were committed by the main parties to the conflict that began in Mali in 2012.

1039. The Commission concludes that, since January 2012, there has been at least one non-international armed conflict across Mali involving the Malian Armed Forces and the French armed forces, as well as extremist organized armed groups and other organized armed groups, whether pro-Government or not.

[1686] As was made clear in the preamble to the updated principles for the protection and promotion of human rights through action to combat impunity of 8 February 2005, "forgiveness, which may be an important element of reconciliation, implies, insofar as it is a private act, that the victim or the victim's beneficiaries know the perpetrator of the violations and that the latter has acknowledged his or her deeds." See report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, 8 February 2005.

1040. The Commission therefore considers that the extremist armed groups committed crimes against humanity and war crimes, including murder, mutilation and other cruel treatment, rape and other forms of sexual violence, hostage-taking and attacks against the personnel of humanitarian organizations and of MINUSMA. The Commission also has reasonable grounds to believe that the Malian defence and security forces committed war crimes, including violence to life and person against civilians or persons hors de combat suspected of belonging to or cooperating with extremist armed groups. The Commission considers that MNLA, GATIA and MAA-Plateforme also committed war crimes. It also documented two serious human rights violations committed by MINUSMA forces and one violation of international humanitarian law committed by the forces of *Operation Barkhane*. The Commission has reasonable grounds to believe that members of the Dan Na Ambassagou group committed murders that constitute crimes against humanity and war crimes, and that the attacks against several Fulani hamlets by a Macina self-defence group amount to murder that constitutes a war crime.

1041. The Commission notes with regret that eight years after the start of the crisis and five years after the signing of the Peace and Reconciliation Agreement, impunity for those conflict-related violations, abuses and crimes remains one of the main challenges to peace and reconciliation in Mali. The handling of conflict-related court cases by the Malian authorities remains very limited and largely inadequate. The vast majority of the alleged perpetrators of the atrocities committed in Mali since the start of the conflict remain unpunished and continue to enjoy total impunity.

1042. The Commission observes that this finding is not specific to the 2012 conflict. While each of the crises since 1960 has brought its share of abuses, violations and crimes against the population, since independence, and even with the advent of democracy in the 1990s, very little has been done by the Government of Mali to address the violations, abuses and crimes related to past crises, whoever the perpetrators may be. The establishment of the Truth, Justice and Reconciliation Commission, which this Commission welcomes, represents the first serious attempt to address the crimes of the past. Nevertheless, even when it has achieved all its objectives, the Truth, Justice and Reconciliation Commission, which focuses its work on the plight of victims, will not have met the expectations for justice or the rights of the victims of the abuses committed during the previous crises and rebellions, particularly with regard to determining the perpetrators and their responsibility. The ongoing failure to seek the truth and address impunity in Mali for the abuses committed during previous crises was, in this Commission's view, one of the triggers of the 2012 crisis. Until the issue of past crimes is adequately addressed, it will be difficult to envisage an end to the cycles of violence that Mali has been experiencing since 1960.

1043. The Commission's investigations also show that ongoing impunity in Mali is one of the factors fuelling the serious inter-community violence that has been taking place in the central part of Mali since 2015 and which has worsened considerably since 2018. In the Commission's view, if the still sporadic violence that it documented between the Fulani, Dogon and Bambara communities in 2016 and 2017 had been dealt with seriously and credibly by the judicial authorities at the time of the events, that would have helped to limit the proliferation of self-defence groups and to stem the tide of violence between the communities. If Mali also fails to grasp the importance of delivering justice for the inter-communal abuses committed in the central part of the country since January 2018, the deadline for the Commission's mandate, that could be a factor which aggravates the situation in regions that hitherto had been relatively spared from inter-communal conflict.

1044. Besides the obstacles and challenges within the Malian justice system and its endemic corruption, impunity in Mali for conflict-related violations, abuses and crimes is above all due to a lack

of political will to make combating impunity for conflict-related abuses a priority. The Commission noted sporadic and disorganized efforts by the Government of Mali in that regard, but considers that they reflect a need to demonstrate that certain provisions of the Peace and Reconciliation Agreement are being implemented, rather than a truly strong and proactive strategy for delivering justice to the victims of conflict-related violations, abuses and crimes.

1045. The Commission urges the Government of Mali and its international partners to ensure that the fight against impunity a top priority in the peace process and does not take second place to other considerations. It is convinced that a definitive end to the crisis in Mali can only be achieved through an ambitious, comprehensive and sincere approach to combating impunity. That will make it possible not only to establish the criminal responsibility of the main perpetrators of the serious violations and abuses committed during the conflict, but also to promote peace, truth, reconciliation and the rights of victims.

1046. The Commission invites Mali to repeal all laws leading to amnesties for perpetrators of international crimes and serious human rights violations that cannot be granted under the principles of international law or that could hinder the effective fight against impunity. In that regard, it considers that, given the reluctance of criminal courts to resort to international criminal law, excluding only crimes that are not subject to amnesty under international law from the scope of application of the 2019 National Accord Act could have the effect of preventing the prosecution of perpetrators of international crimes and serious human rights violations.

1047. While almost all the parties to the conflict are responsible for abuses, the Commission notes with concern the very large number of human rights violations and documented war crimes attributable to the defence and security forces, in particular the ill-treatment, torture, enforced disappearances and summary executions targeting primarily the Tuareg, Arab and Fulani populations during the recapture of the northern regions of Mali in 2013 and during the "counter-terrorism" operations carried out since 2015 in the central part of the country. In addition, military police officers accompanying the Malian Armed Forces on operations are rarely in a position to intervene or carry out their duties unhindered with confidence and are sometimes threatened by soldiers of the Malian Armed Forces when they attempt to carry out their military police duties. The Commission firmly reiterates that the fight against "terrorism" cannot explain or justify the commission of serious human rights violations and war crimes.

1048. In view of the extremely worrying fact that none of the conflict-related abuses committed by the Malian defence and security forces has resulted in a criminal trial, it is essential that the Malian courts be placed in a situation where they are able to investigate, prosecute or adjudicate such cases far from any political interference. The Commission is convinced that the investigation, prosecution and trial of members of the Malian Armed Forces who allegedly committed abuses would not weaken the army but, on the contrary, strengthen it by enabling it to regain vital support on the ground and the trust of a significant part of the civilian population, who no longer perceive it as providing security for them or their property and instead turn to extremist armed groups or other groups to perform those sovereign functions.

1049. Lastly, in the course of its investigations, the Commission identified a total of 281 attacks against MINUSMA property and personnel that occurred between 1 July 2013, date of establishment of the Mission, and 19 January 2018. The Commission notes the underlying complexity of the status of MINUSMA under international humanitarian law and the difficulty of determining its exact status in

the Malian armed conflict and, thus, of accurately determining the legal nature of the attacks against it. The Commission considers this to be a matter of great legal and strategic importance that could be taken up by the Secretary-General. The Commission notes that this complexity is not limited to MINUSMA and that the mandates and activities of United Nations peace missions in modern times make it increasingly difficult to distinguish between peacekeeping and peace-enforcement missions.

XIII. Recommendations

1050. In accordance with its mandate, the Commission hereby presents recommendations for the fight against impunity in the light of the abuses, violations and crimes identified. The Commission's recommendations build on the relevant recommendations drawn up previously by various other actors and mechanisms involved in addressing the 2012 crisis.

(A) Previous recommendations endorsed by the Commission

1051. In 2013 and 2018, Mali underwent two universal periodic reviews at the Human Rights Council, following which States made numerous recommendations concerning the fight against impunity. Since the start of the crisis in 2012, civil society and international organizations have also produced numerous reports in which many often relevant recommendations have been made to enable Mali to meet the challenges of the crisis. The Commission notes in particular the many relevant proposals contained in the reports of the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Special Representative of the Secretary-General for Children and Armed Conflict and the Independent Expert on the situation of human rights in Mali. The Commission analysed 1,426 recommendations contained in those reports (Annex 4) and endorsed those relating to the fight against impunity in Mali, which it is presenting in this section of the present report and it feels do not need to be included among its own recommendations.

Recommendations on the fight against impunity

1052. Since 2012, actors and observers of the human rights situation in Mali have been urging the Malian Government on more than 400 occasions to engage more actively in the fight against impunity and to conduct prompt investigations into serious human rights violations, identify the perpetrators and prosecute them in its criminal courts. Over the years, these calls have become increasingly urgent and detailed. In particular, the actors and observers have stressed the need to bring to justice any soldiers of the Malian Armed Forces who might be guilty of abuses. They have also called on Mali to reaffirm the imprescriptibility of war crimes and crimes against humanity, to refuse any amnesty for perpetrators of serious human rights violations and to refrain from releasing alleged perpetrators of serious human rights violations without legal process.

1053. In addition, the Commission noted some 40 recommendations inviting the Malian authorities to continue their cooperation with ICC and inviting the ICC Prosecutor to continue her investigations into the Malian situation.

Recommendations concerning gender and sexual violence

1054. The Commission noted more than 220 recommendations in which the Malian authorities and their international partners are called upon to make the fight against sexual violence and gender-based

discrimination a priority, and to further promote the rights of women and girls. In particular, the Malian authorities are called upon to investigate and prosecute the perpetrators of rape and other forms of sexual and gender-based violence, especially the 115 cases to be considered by the Regional Court of Bamako, commune No. III; to initiate the process for the adoption of the law on gender-based violence; and to adopt a law governing genital mutilation and establishing the minimum age of marriage for girls at 18 years. In general, the Government of Mali is called upon to give women a greater role in society and in the transitional justice process.

Recommendations concerning children

1055. The Commission noted 150 recommendations in which the armed groups involved in the conflict are called upon to immediately stop recruiting and using children, and to condemn any attack against schools or the use of educational facilities for military purposes. The Malian authorities are called upon to condemn these practices and to put in place measures to facilitate the reintegration into society of children affected by the conflict. Mali is called upon to adopt specific legislation prohibiting all forms of sexual violence or genital mutilation against children and to put an end to traditional practices such as child marriage.

Recommendations concerning the rights and protection of victims

1056. The Commission identified about 130 recommendations for the protection of the judicial rights of victims, including recommendations for the education of victims about criminal justice and transitional justice processes, the enhancement of their participation in judicial proceedings or in the work of the TJRC, their right to reparation and compensation for the prejudice suffered, and medical and psychosocial care for victims.

1057. The Commission noted more than 50 recommendations specifically relating to the protection of victims and witnesses, human rights defenders and judicial personnel.[1687] The recommendations concerning victims and witnesses focus on the development of the normative framework for the protection of victims and witnesses and the establishment of a protection programme. Recommendations have also been made concerning the protection of judicial personnel and, in particular, the security of law officers, to facilitate the deployment and work of magistrates in more risky areas.

Recommendations for the harmonization of the country's laws with international law

1058. Human rights actors and observers have made more than 70 recommendations in which they call upon the Government of Mali to bring its national laws into line with the international human rights conventions it has ratified, in particular those protecting women, children and ethnic minorities. They have also called upon Mali to criminalize slavery and to ensure that its national laws are fully in line with their obligations under the Rome Statute of the International Criminal Court. The Commission noted many calls for Mali to effectively abolish the death penalty by adopting the bill that was submitted to the National Assembly in 2007 to that effect.

[1687] The recommendation to adopt the law concerning human rights defenders have been implemented, since the law was promulgated on 12 January 2018 and the decree establishing the terms and conditions for its implementation was published on 18 February 2020.

Recommendations concerning judicial resources, training of judicial personnel and access to justice

1059. The Commission identified more than 100 recommendations about the need to provide courts and detention centres with more personnel and equipment, including computer technology, to help them fulfil their tasks. The formulators of the recommendations also stress the need for better training for security forces and judicial and prison officials in international criminal law, human rights and gender mainstreaming. The Commission also noted a large number of recommendations in which the Malian authorities are called upon to improve and simplify access to justice for Malian citizens, in particular by ensuring the effective functioning of the justice system across the country.

Recommendations concerning the rights of the defence and conditions of detention

1060. The Commission noted nearly 80 recommendations in which the Malian authorities are called upon to further protect the rights of the defence and the conditions of detention of detainees. Considering the low number of lawyers in the country, especially outside Bamako, it was recommended that the Malian authorities take the necessary measures to encourage young lawyers to set up operations in the regions. Observers of the Malian justice system have also reminded law officers that any suspicion of torture must be investigated and prosecuted, and that no evidence or confession made in that context should be admitted in judicial proceedings. In their recommendations, they called for the improvement of detention conditions and the construction and renovation of detention centres.[1688]

Recommendations concerning corruption

1061. The Commission also identified some 40 recommendations concerning the fight against corruption, especially in the judiciary. In particular, Malian justice actors and observers have called on the Government to take concrete measures to eradicate endemic corruption, to ensure the effective application of anti-corruption laws in order to strengthen public confidence in the justice system, and to adopt a zero-tolerance policy against corruption by any public official. They have also proposed the establishment of a new independent anti-corruption mechanism, the strengthening of the inspection capacities of judicial services, and the establishment of a green phone line for users to report cases of corruption.

Recommendations concerning the coordination of and synergy between actions to support the Malian justice system

1062. Based on the observation that there is little coordination between the different strategies and activities of international and civil society organizations working in the field of justice and human rights, recommendations have been made on nearly 70 occasions for these organizations to improve the coordination and streamlining of their activities.

[1688] The Commission notes the efforts that the Malian authorities have made to implement these recommendations, in some cases with the assistance of MINUSMA, in particular with regard to the renovation of detention centres in the regions and in Bamako, and the construction of a new prison under way in Bamako, which should meet international standards in this area.

(B) Recommendations of the Commission

1063. At the end of its investigation, and based on its findings, the Commission is convinced that one of the main and most urgent priorities for Mali is to investigate, prosecute and try the perpetrators of international violations, abuses and crimes related to the conflict. Consequently, it focuses its recommendations on what it considers necessary and catalytic to combat impunity, support national efforts and ultimately contribute to national reconciliation by breaking the endless cycle of violence. Its main recommendation runs along these lines. It then makes a number of other recommendations supporting and reinforcing this idea. In addition to the main recommendations detailed below, the Commission also presents a table showing to whom the recommendations are addressed, primarily the Government of Mali, but also the armed groups that signed the Peace and Reconciliation Agreement and other parties to the conflict, MINUSMA and, more broadly, the United Nations and other international partners.

1064. Thus, to combat impunity in Mali and promote national reconciliation, the Commission recommends:

i. The trial without delay of the perpetrators of serious violations and crimes based on the emblematic cases it documented

1065. The Commission notes with satisfaction the efforts made by the Malian authorities to set up transitional justice mechanisms. It notes in particular the progress in the work of the TJRC, which had taken depositions from several thousand victims and held one public hearing (out of five planned) with about ten victims as at the time of submission of this report. The Commission considers, however, that the TJRC alone cannot address the challenge of impunity in Mali. By virtue of mandate entrusted to it and the victim-centred objectives it has set itself, the TJRC will not be able to satisfy the expectations of justice and the rights of the victims of abuses committed during the previous crises and rebellions, particularly with regard to the identification and establishment of the responsibility of the perpetrators.

1066. The work of the TJRC on behalf of victims must therefore be accompanied by the investigation and prosecution of the perpetrators of serious human rights violations and abuses and international crimes. Owing to the magnitude, seriousness and specificity of international crimes involved, as well as the technical knowledge required to investigate and prosecute the perpetrators, such cases should be entrusted to a court specializing in international crimes. That would also be an opportunity for Mali to complete its transitional justice architecture with the establishment of a specific judicial mechanism, which has been lacking to date.

1067. In this context, the Commission considers that the recent extension of the jurisdiction of the Special Judicial Unit to include the crimes of genocide, crimes against humanity and war crimes is not a viable solution for dealing with all violations and abuses of human rights and humanitarian law and international crimes related to the conflict, for several reasons. First, the Special Judicial Unit was not designed as a transitional justice forum per se, although it helps to send a strong signal as to the willingness of Mali to make progress in the fight against impunity for international crimes. Secondly, the Special Judicial Unit alone does not seem to have the capacity to handle all the cases now falling within its jurisdiction. The Commission noted that the Unit is already overloaded with terrorism cases. The Commission has doubts about the Unit's ability to also handle international crimes related to the

conflict since 2012. The Unit also faces some of the typical challenges affecting Malian courts, such as corruption and difficulty in resisting political pressure.

1068. While acknowledging that several solutions are available to the Malian authorities, the Commission recommends that an entity specializing in the fight against international crimes be established in Malian courts, with the support of the international community. This unit would specialize in war crimes and crimes against humanity, like the Special Judicial Unit. The priority mandate of the new unit would be to investigate and prosecute the international crimes related to the conflict since 2012 documented by the Commission, including the cases of sexual violence from 2012 and 2013 currently pending before Malian courts and abuses committed by the defence and security forces.

1069. The Commission anticipates, however, that some of the challenges it has identified, in particular the lack of resources of the justice system and the difficulty for judicial institutions to resist certain types of political interference, could threaten the ability of the new entity to function properly. To remedy that situation, the Commission considers that, in addition to providing ongoing training for Malian law officers, judicial police officers and other judicial auxiliaries on the specificities of investigating and prosecuting international crimes, the new entity should include international experts, who would participate in criminal proceedings alongside Malian officials. The presence of such experts would help not only to strengthen the independence of the court vis-à-vis the political authorities, but also to ensure a sufficiently thorough transfer of jurisdiction. Ideally, a significant majority of these experts would come from the countries of the Sahel, to ensure linguistic adaptation and a good understanding of the context.

1070. Given the complex environment and the significant number of crimes committed in the context of the conflict since 2012, the proposed entity would need a clear and legible criminal policy that would serve as prosecutorial guidelines. The policy would make it possible to determine a prosecutorial strategy with priorities established in a transparent manner and on the basis of objective criteria. The cases documented by the Commission could be useful in the determination of that strategy. The policy could also be helpful in highlighting, for the Malian population and observers of the Malian justice system, any progress made in the fight against impunity in Mali, and for sending a strong signal in terms of accountability and the restoration of the authority of the State and the rule of law.

1071. The criminal policy could be determined in consultation with victims' associations and civil society organizations, and could cover all forms of sexual and gender-based violence and violence against children. It is also essential, in the Commission's view, that the criminal policy and resulting prosecutorial strategy also apply to abuses committed by the security and defence forces.

ii. The adoption of measures demonstrating a strong and proactive strategy to combat impunity, including by ensuring that there is no prescription or amnesty for the most serious crimes and violations

1072. In a context of widespread impunity, and mainly for serious human rights violations and abuses and international crimes, the Commission solemnly stresses the need for the Government of Mali and its international partners to make the fight against impunity in Mali an absolute priority.

1073. In order to engage fully in this fight, the Government of Mali must, in particular, implement and respect article 46 of the Peace and Reconciliation Agreement, which calls for comprehensive reform of the justice system but also the assurance that there is no prescription or amnesty for international crimes, and for the consolidation of the judiciary to ensure respect for the rule of law throughout the country. This means, in practical terms, that the Malian authorities should repeal all laws that allow for the granting of amnesty to perpetrators of international crimes and other serious human rights violations, something which they could not obtain under international law, or that could pose challenges for an effective fight against impunity.

1074. The Commission therefore recommends that Mali repeal: (1) Act No. 1997-016 of 7 March 1997 granting amnesty for all offences under the Criminal Code committed in connection with the rebellion in the country during the period from 29 June 1990 to 27 March 1996; (2) Act No. 2012-020 of 18 May 2012 granting amnesty for the events that occurred during the mutiny that led to the resignation of the President of the Republic; and (3) Act No. 2019-42 of 24 July 2019 concerning the National Accord Act, or at least to revise it in the light of the conclusions and recommendations of the TJRC and ensure that it is properly drafted to prevent the granting of any amnesty to perpetrators of serious human rights abuses or violations.

1075. Making the fight against impunity a priority also means ensuring that all perpetrators of serious human rights violations and international crimes, including members of the defence and security forces, are brought to justice before Malian courts. In practical terms, this means implementing Order No. 2016-020/P-RM of 18 August 2016 on the general status of military personnel, and in particular its provisions concerning requests addressed to the Minister of Defence for members of the military to be made available to participate in criminal trials, in order to ensure that Malian military personnel are subject to the jurisdiction of ordinary Malian criminal courts.

1076. More generally, and in order to break the endless cycle of crises that Mali has been experiencing since 1960, the Commission considers it necessary for Mali to address in a sincere and transparent manner the crimes that have marked its history since independence. Although the National Accord Act provides for the declaration of a "national day of forgiveness" and a "national week of reconciliation" , as well as the establishment of an independent scientific committee to write the "general inclusive history of Mali", which is to become the source for school textbooks, the Commission believes that the TJRC is the entity best placed to make recommendations on how to establish a remembrance mechanism to enable Mali and other actors involved to acknowledge their respective responsibilities for the abuses and violations committed between 1960 and 2012. Whether or not the recommendations of the TJRC are identical to the provisions of the National Accord Act of 2019, they must be fully and sincerely implemented by the Government of Mali.

1077. In the course of its work, the Commission found that, in practice, the Malian judicial authorities often did not feel that they could take up a case unless they received a formal complaint. However,

given the Malian context, the shortcomings regarding victim and witness protection and the mistrust of the national justice system, such complaints are rare. For the fight against impunity to become a priority, the Malian judicial authorities must therefore initiate prompt investigations and prosecutions upon receiving credible information about the commission of a crime falling within their jurisdiction. This proactive requirement applies in particular to the gendarmes and law officers of the Special Judicial Unit, who are required to open an investigation whenever there is a suspicion that acts of violence or torture may have been committed against individuals officially handed over to them.

1078. In order to win the fight against impunity, the Malian authorities must be able to count on the support of their international partners, in particular MINUSMA.[1689] The Commission therefore calls upon MINUSMA and all international partners to continue to support the efforts of the Malian authorities to identify and arrest the perpetrators of serious human rights violations and abuses and international crimes. It also stresses the need to support the implementation of the Human Rights Due Diligence Policy in the provision of United Nations support to non-United Nations defence and security forces in Mali, and to respect the standard operating procedure issued by the Human Rights and Protection Division of MINUSMA to ensure that the United Nations does not provide any support to groups or individuals suspected of committing serious human rights violations.

1079. Lastly, the Commission notes that, since 2013, the Human Rights and Protection Division of MINUSMA has been conducting detailed field investigations into human rights abuses and violations committed in Mali, which have allowed it to collect a significant number of testimonies and other evidence. The Commission calls for that documentation work to be published more quickly and at regular intervals in order to provide a comprehensive and more regular overview of the situation of human rights in Mali.

iii. The protection of the rights of women and children in Mali

1080. Major factors within the Malian justice system, including patriarchal attitudes and intimidation, contribute to impunity for sexual violence in particular. To ensure that victims of sexual violence have more confidence in the justice system, the justice, defence and police sectors should first be reformed in line with the United Nations women, peace and security agenda as articulated in Security Council resolution 1325 (2000) and subsequent relevant resolutions. The Commission also requests the Government of Mali and the United Nations to take all necessary measures to implement the

[1689]For example, part of the mandate of MINUSMA under Security Council resolution 2100 (2013) is to "support, as feasible and appropriate, the efforts of the transitional authorities of Mali, without prejudice to their responsibilities, to bring to justice those responsible for war crimes and crimes against humanity in Mali, taking into account the referral by the transitional authorities of Mali of the situation in their country since January 2012 to the International Criminal Court." Security Council resolution 2100 (2013) of 25 April 2013 (S/RES/2100 (2013)). This objective for MINUSMA has appeared in all Security Council resolutions concerning the Mission since 2013. For example, in its resolution 2480 (2019), the Security Council calls on MINUSMA "to support Malian authorities in ensuring that those responsible for violations and abuses of human rights and violations of international humanitarian law are held accountable and brought to justice without delay". Security Council resolution 2480 (2019) of 29 July 2019 (S/RES/2480 (2019)).

commitments made in the joint communiqué signed by the Government of Mali and the Special Representative of the Secretary-General on Sexual Violence in Conflict on 1 March 2019 in Bamako.

1081. Given the current body of laws in Mali, it is necessary to adopt legislation on the prevention, repression and handling of gender-based violence. Another law could also help to bring the laws of Mali, in particular its Family Code, into line with the international conventions the country has ratified.

1082. The Commission noted that when Malian defence and security forces arrested minors associated with armed groups, they sometimes treated them as adult combatants and detained them, contrary to the provisions of the July 2013 protocol between the Government of Mali and the United Nations system in Mali. The Commission recommends that the Government of Mali implement those provisions fully and without exception. Pending a definitive determination, the provisions should apply whenever there is any doubt as to the age of an arrested individual.

1083. The Commission maintains that, in order to better protect children, the judicial authorities must apprehend and try the perpetrators of abuses against children; this would be a strong first message. This is why the Commission recommends that the prosecutorial strategy of the new unit proposed above include conflict-related violence against children.

1084. To better protect children, especially those in conflict with the law, legislative reforms must be introduced to prohibit and set out punishment for traditional practices that violate children's rights, including genital mutilation, child marriage and child exploitation. As part of these reforms, there should be clear legal stipulations that children associated with armed groups, when arrested, must be treated first and foremost as victims.

1085. At the judicial level, the Commission believes that this also implies the appointment of special prosecutors and the establishment of special police or gendarmerie units and/or focal points on sexual and gender-based violence and violence against children. This recommendation should also be reflected in the appointments and organizational charts of the special unit recommended by the Commission. That unit should pay particular attention to cases of sexual violence, and the judiciary should ensure that all military personnel accused of sexual and gender-based violence are brought to justice.

iv. The development of an operational and institutional normative framework for the protection of victims and witnesses and the appropriate transposition of the Rome Statute

1086. The Commission noted that there was no coherent normative, operational and institutional framework for the protection of victims and witnesses, especially in the context of the crisis. It appears that the Code of Criminal Procedure, which is currently being revised, provides for the incorporation in Malian law of certain general principles relating to the protection of victims and witnesses, but the Commission considers that a specific law would be better, in that would not be a symbolic instrument, but would also shine a bright light on the topic, and would be more accessible include practical or specific measures that could be of benefit to the victims and witnesses of any offence.[1690]

1087. The Commission is aware that a legislative arsenal for the protection of victims and witnesses would not be effective without resources and capacities. It therefore invites the Government to develop

[1690] The Commission notes that several draft laws on this issue have been proposed by civil society but have not been adopted or implemented to date. The contents of the two existing draft texts are at present relatively incomplete. It would seem to make more sense for the two texts

and strengthen the operational capacities of the defence and security forces and the good practices of the judicial system, in order to facilitate the protection of victims and witnesses, particularly during judicial investigations and trials.

1088. The Commission recommends that MINUSMA continue to develop good practices for the protection of people who cooperate with the Mission, including with regard to human rights investigations, and to formalize such practices as official guidelines, similar to the existing guidelines for the protection of civilians seeking protection on MINUSMA sites. Accordingly, the Human Rights and Protection Division of MINUSMA should take over responsibility for the protection of people who cooperated with the Commission upon completion of the latter's work.

1089. The Commission also recommends that the Malian legislature take advantage of the current revision of the Code of Criminal Procedure to transpose more clearly and fully onto Malian law the provisions of the Rome Statute, particularly those concerning the definition of war crimes and crimes against humanity.

v. The establishment of a mechanism to monitor the implementation of the Commission's recommendations

1090. Following an analysis of the many recommendations that have been made since 2012, the Commission found that, despite being highly relevant, many of them have remained unimplemented or have been implemented only partially or incompletely. The Commission notes that the Government of Mali has made sporadic efforts to strengthen its efforts in the fight against impunity. However, these efforts appear disorganized and are not based on a voluntarist, ambitious and coherent policy. In addition, the many national and international organizations and entities working to improve criminal justice and combat impunity in Mali that formulated all these recommendations, generally work along disparate tracks.

1091. To ensure that the fight against impunity in Mali is more consistent and that its recommendations are implemented, the Commission recommends that a mechanism be established to monitor the implementation of its recommendations. In the Commission's view, the objective and mandate of such a mechanism should be, beyond monitoring the implementation of its recommendations, to coordinate and streamline all efforts to achieve true justice in the face of violations, abuses and crimes related to the conflict in Mali. The Government of Malu should be fully engaged in such mechanism, which should also work closely with MINUSMA and other relevant national and international partners. The Commission therefore considers that it would be useful for the Independent Expert on the situation of human rights in Mali to include in his periodic reports information on any progress made in the implementation of these recommendations.

1092. The Government of Mali, in collaboration with the United Nations, could agree to convene a conference on impunity and fair criminal justice that could serve as the basis for the official launch of the implementation of the Commission's recommendations.

to be merged into one and for that text to cover not just victims and witnesses of human rights violations but also all victims and witnesses of crimes. See, for example, the draft law on the protection of victims of human rights violations in the Republic of Mali and the draft law on the protection of witnesses of human rights violations in the Republic of Mali.

Summary table of the Commission's recommendations

Aims of the recommendation	Action to be undertaken	Target or responsible entities
To try without delay of the perpetrators of serious violations and crimes based on the emblematic cases documented by the Commission	Establish, within Malian courts, a special entity for the handling of international crimes.	Government of Mali Technical and financial partners
	Define, in consultation with victims' associations and civil society organizations, a clear and legible criminal policy that would serve as guidelines for criminal prosecutions and that should cover sexual and gender-based violence, violence against children and abuses committed by the defence and security forces.	Government of Mali
To adopt measures demonstrating a strong and proactive strategy to combat impunity, including by ensuring that there is no prescription or amnesty for the most serious crimes and violations	Repeal all laws that allow for the granting of amnesty to perpetrators of international crimes and serious human rights violations, something which is not allowed under the principles of international law or which could impede an effective fight against impunity. Repeal in particular: (1) Act No. 1997-016 of 7 March 1997 granting amnesty for all offences under the Criminal Code committed in connection with the rebellion in the country during the period from 29 June 1990 to 27 March 1996; (2) Act No. 2012-020 of 18 May 2012 granting amnesty for the events that occurred during the mutiny that led to the resignation of the President of the Republic; and (3) Act No. 2019-42 of 24 July 2019 concerning the National Accord Act, or at least to revise it in the light of the conclusions and recommendations of the TJRC and ensure that it is properly drafted to prevent the granting of amnesty to perpetrators of serious human rights violations and abuses.	Government of Mali Signatories to the Agreement on Peace and Reconciliation in Mali
	Prosecute in Malian courts, as soon as possible, all perpetrators of serious human rights violations and international crimes, including members of the Malian defence and security forces. Ordinance No. 2016-020/P-RM of 18 August 2016 on the general status of military personnel must be implemented so that Malian military personnel are subject to the jurisdiction of ordinary Malian criminal courts. Requests by Malian judges addressed to the Minister of Defence to make military officers available to participate in criminal trials must	Civil and military judicial authorities Minister of Defence of Mali

	therefore be automatically and immediately approved and implemented.	
	Initiate, in collaboration with the armed groups that signed the 2015 Peace and Reconciliation Agreement, a process of genuine remembrance that would lead to reconciliation through truth and justice on the basis of the future recommendations of the TJRC on the topic.	Government of Mali Signatories to the Peace and Reconciliation Agreement TJRC
	Continue to support the work of the TJRC in a more coordinated manner.	Technical and financial partners MINUSMA TJRC
	Proactively initiate rapid investigations and prosecutions as soon as there is credible information that a crime has been committed that falls within their jurisdiction. This requirement applies in particular to the gendarmes and law officers of the Special Judicial Unit, who should open an investigation whenever there is a suspicion that acts of violence or torture may have been committed against individuals handed over to them under judicial procedures.	National judicial authorities (in particular gendarmes and law officers)
	Enter into the judicial system the cases of all persons detained at DGSE and transfer them to official places of deprivation of liberty where a judge can determine whether the conditions for pre-trial detention have been met.).Allow CNDH to have access to persons detained at DGSE facilities and make regular or unannounced visits to verify the treatment and condition of detainees and to prevent torture and other cruel, inhuman or degrading treatment or punishment.	Government of Mali (in particular the Presidency of the Republic) DGSE
	. Strengthen military police missions by ensuring that a sufficient presence of gendarmes during all military operations and by reinforcing their authority and independence vis-à-vis the military hierarchy. . Train members of the Malian Armed Forces on the role of military police officers in military operations and ensure that the military hierarchy punishes any Malian Armed Forces personnel who do not respect the authority of military police officers or attempt to threaten them in the field.	Government of Mali Defence and security forces
	.Continue to support the efforts of the Malian authorities in their fight against impunity, including in the identification and arrest of	Technical and financial partners

	perpetrators of serious human rights violations and abuses and international crimes.	MINUSMA
	.Support the diligent implementation of the Human Rights Due Diligence Policy, in order to ensure that the United Nations does not provide any support to groups or individuals who commit serious human rights abuses or violations.	United Nations and MINUSMA (HRPD) Technical and financial partners
	.Publish more of the documentation work of the Human Rights and Protection Division of MINUSMA as quickly as possible and at regular intervals, in order to present a comprehensive and more regular overview of the situation of human rights in Mali.	MINUSMA (HRPD) OHCHR
To protect the rights of women and children in Mali	.Reform the justice, defence and police sectors in line with the United Nations women, peace and security agenda. .Take all necessary measures to implement the commitments made in the joint communiqué signed by the Government of Mali and the Special Representative of the Secretary-General on Sexual Violence in Conflict on 1 March 2019 in Bamako.	Government of Mali Agreement Monitoring Committee
	.Ensure the recruitment and training of more women and the deployment of female officers to the regions of the country.	Government of Mali (Ministry of Security and Social Protection)
	.Ensure effective access of victims to police and gendarmerie stations, courts and tribunals.	Government of Mali (Ministry of Security and Social Protection and Ministry of Justice) TRJC
	.Adopt, as quickly as possible, legislation on the prevention, repression and handling of gender-based violence.	Government of Mali
	.Revise national laws, in particular the Family Code, to bring them into line with the international conventions ratified by Mali.	Government of Mali
	. Implement and report on concrete actions and measures taken by the groups listed in the annex to the Secretary-General's annual report on children and armed conflict, in order to prevent and address abuses against children.	CMA and Plateforme Government of Mali MINUSMA
	.Prohibit and set out punishment for traditional practices that violate	Government of Mali

	the rights of the child, such as genital mutilation, child marriage and child exploitation.	(Ministry of Justice and Ministry of Social Protection, Women and Children)
	.Ensure the implementation of the Optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict, ratified by Mali on 16 May 2002, which provides that in all circumstances children arrested for involvement in armed conflict should be treated primarily as victims. . Implement fully and without exception the provisions relating to arrests by the defence and security forces of Mali and/or their allies of the protocol signed between the Government of Mali and the United Nations system in Mali in July 2013. Pending a definitive determination, the provisions of the protocol should apply whenever there is any doubt as to the age of an arrested individual.	Government of Mali (Ministry of Justice and Ministry of Social Protection, Women and Children) MINUSMA (HRPD/SSR/DDR)
To develop an operational and institutional normative framework for the protection of victims and witnesses and the appropriate transposition of the Rome Statute	.Adopt a specific law governing the protection of victims and witnesses, and extend the benefits of such law to all victims and witnesses of crimes.	Government of Mali (Ministry of Social Protection, Women and Children)
	.Transpose in a comprehensive and clear manner the provisions of the Rome Statute, in particular those relating to war crimes and crimes against humanity (the current revision of the Code of Criminal Procedure is a good opportunity for this).	Government of Mali (Ministry of Justice)
	.Strengthen the operational capacities of the police, gendarmerie, army and judiciary to protect victims and witnesses, in particular during judicial investigations and trials.	Government of Mali Technical and financial partners
	.Establish as formal guidelines the good practices of MINUSMA concerning the protection of persons cooperating with it, including with regard to human rights investigations.	MINUSMA (HRPD)
	.Protect persons who cooperated with the Commission of Inquiry at the end of its work.	MINUSMA (HRPD)
	. Establish a mechanism to monitor the implementation of its recommendations. In the view of the Commission, the objective and	Government of Mali Technical and financial

To establish a mechanism to monitor the implementation of the Commission's recommendations	mandate of such a mechanism would be, beyond monitoring the implementation of the recommendations, to coordinate and streamline all efforts aimed at achieving true justice in the face of violations, abuses and crimes related to the conflict in Mali. . Indicate, in the periodic reports of the Independent Expert on the situation of human rights in Mali, any progress made in the implementation of the Commission's recommendations.	partners MINUSMA Independent Expert on the situation of human rights in Mali
	. Convene a conference on impunity and fair criminal justice in Mali.	Government of Mali Technical and financial partners MINUSMA

List of acronyms and abbreviations

Peace and Reconciliation Agreement	Agreement for Peace and Reconciliation in Mali negotiated in Algiers and signed on 15 May and 20 June 2015 in Bamako
AMDH	Malian Human Rights Association
Ouagadougou preliminary agreement	Preliminary agreement on the presidential elections and inclusive peace talks in Mali signed in Ouagadougou on 18 June 2013 between the Transitional Government of National Unity of the Republic of Mali and the Coordination du mouvement national de l’Azawad and the Haut conseil pour l’unité de l’Azawad
Algiers agreement of 2006	Algiers agreement for the restoration of peace, security and development in the Kidal region of 4 July 2006
AI	Amnesty International
AQIM	Organization of Al-Qaida in the Islamic Maghreb
ARLA	Revolutionary army for the liberation of Azawad
BMS	Banque Malienne de Solidarité
ECOWAS	Economic Community of West African States
ICRC	International Committee of the Red Cross
CJA	Congrès pour la justice dans l'Azawad
CMA	Coordination des mouvements de l'Azawad
CMFPR	Coordination des mouvements et Front patriotique de résistance
CMLN	Comité Militaire de Libération Nationale
CNDH	National Human Rights Commission
CNRDRE	Comité national pour le redressement de la démocratie et la restauration de l'État
Commission	International Commission of Inquiry for Mali
Security Council	United Nations Security Council
COS	Special operations command
CPA	Coalition du peuple pour l’Azawad
ICC	International Criminal Court
TJRC	Truth, Justice and Reconciliation Commission
HRPD	Human Rights and Protection Division of MINUSMA

DDR	Disarmament, demobilization and reintegration of former fighters
DGSE	General Directorate for State Security
DNPEF	National Directorate for the Advancement of Children and Families
IED	Improvised explosive devices
ISGS	Islamic State in the Greater Sahara
EUTM	European Union Training Mission in Mali
FIDH	International Federation for Human Rights
FLN	Front de libération des régions du nord
FLNA	Front de libération nationale de l'Azawad
GATIA	Groupe autodéfense touareg Imghad et alliés
GMS	Groupement mobile de sécurité
GTIA	Groupements Tactiques Interarmées
FSH	Haut conseil de l'Azawad
OHCHR	Office of the United Nations High Commissioner for Human Rights
HCUA	Haut Conseil pour l'unité de l'Azawad
HRW	Human Rights Watch
ICG	International Crisis Group
IFM	Teacher Training Institute
JNIM	Islamic group for the support of Islam and Muslims - *Jamāʿat nuṣrat al-islām wal-muslimīn*
MAA	Mouvement arabe de l'Azawad
MAA-CMA	Branch of MAA that signed the Peace and Reconciliation Agreement with CMA
MAA-Plateforme	Branch of MAA that signed the Peace and Reconciliation Agreement with the Plateforme
Terms of reference	Terms of reference of the Commission, annex to the letter dated 19 January 2018 from the Secretary-General addressed to the President of the Security Council (S/2018/57), issued on 23 January 2018
MIA	Mouvement Islamique de l’Azawad

MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
AFISMA	African-led International Support Mission in Mali
MNA	Mouvement national de l'Azawad
MNLA	Mouvement national de libération de l'Azawad
MPA	Mouvement populaire de l’Azawad
MSA	Mouvement pour le salut de l'Azawad
MUJAO	Mouvement pour l’unicité et le jihad en Afrique de l’Ouest
OCHA	Office for the Coordination of Humanitarian Affairs
ORTM	Office de Radio et Télévision du Mali
National Pact of 1992	National pact concluded between the Government of Mali and the unified movements of Azawad enshrining the special status of the north of Mali, Bamako, 11 April 1992
WFP	World Food Programme
Plateforme	Plateforme des mouvements du 14 juin 2014 d’Alger
Focal point	The Government of Mali has designated ambassador and former minister Boubacar Gaoussou Diarra, a member of the Prime Minister’s Office, as the focal point for the Commission to coordinate its assistance.
Special Judicial Unit	Special judicial unit on combating terrorism and transnational organized crime
RCP	Commando parachute regiment
Secretary-General	Secretary-General of the United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNMAS	United Nations Mine Action Service
USSR	Union of Soviet Socialist Republics

List of annexes to the report of the International Commission of Inquiry for Mali

NB: The Commission has also transmitted to the Secretary-General a strictly confidential annex containing the names of victims and alleged perpetrators in relation to the cases it documented.